

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1934

No. 6214

543

CHARLES W. SAMPSON AND INDEPENDENT TAXI
OWNERS ASSOCIATION, A CORPORATION,
TRADING AS THE DIAMOND CAB COMPANY,
APPELLANTS,

vs.

ROSA L. MANGUM.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

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vs.

ROSA L. MANGUM, APPELLEE.

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Court of Appeals of the District of Columbia

No. 6214.

CHARLES W. SAMPSON, and INDEPENDENT TAXI OWNERS ASSOCIATION, a Corporation, Trading as the Diamond Cab Company, Appellants,

vs.

ROSA L. MANGUM.

a Supreme Court of the District of Columbia.

At Law.

No. 81855.

ROSA L. MANGUM, Plaintiff,

vs.

CHARLES W. SAMPSON and INDEPENDENT TAXI OWNERS ASSOCIATION, a Corporation, Trading as the Diamond Cab Company, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Declaration.

Filed September 22, 1932.

In the Supreme Court of the District of Columbia.

At Law.

No. 81855.

ROSA L. MANGUM, Plaintiff,

VS.

CHARLES W. SAMPSON, and INDEPENDENT TAXI OWNERS ASSOCIATION, a Corporation, Trading as the Diamond Cab Company, Defendants.

The plaintiff, Rosa L. Mangum, sues the defendants for that heretofore on, to wit, the sixth day of July, 1932, the Independent Taxi Owners Association, a corporation, trading as the Diamond Cab Company, was a corporation doing business in the District of Columbia and was engaged under the name of Independent Taxi Owners Association, Incorporated, trading as Diamond Cab Company, in the business of operating, maintaining and assisting others to operate and maintain taxicabs upon the streets and highways of the District of Columbia as common carriers for the transportation of persons for hire; and the defendant, Charles W. Sampson was then the owner of a certain taxicab bearing the name, Diamond Cab Company, and the letters I. T. O. A. in a diamond on the panels of the side doors thereof, and was associated with the said Independent Taxi Owners Association, Incorporated, trading as the Diamond Cab Company, in operating and maintaining the said taxicab as aforesaid, and the said Independent Taxi Owners Association, Incorporated, trading as Diamond Cab Company, and the defendant, Charles W. Sampson, operated the taxicab hereinafter set forth by and through one D. F. Stevens.

That on heretofore, to wit, the sixth day of July, 1932, the plaintiff was operating her automobile in an easterly direction on E Street, Northwest, in the City of Washington, District of Columbia, and the defend-

ants, Independent Taxi Owners Association, Incorporated, trading as Diamond Cab Company, and Charles W. Sampson, acting by and through their servant and agent, D. F. Stevens, were operating a certain taxicab in a southerly direction on Fifteenth Street, Northwest, in, at or about its intersection with E Street.

That it then and there became and was the duty of the said defendants and each of them acting by and through their agent, servant or employee to comply with all of the Traffic and Motor Vehicle Regulations then and there in force in the District of Columbia, and particularly to comply with Traffic and Motor Vehicle Regulations then and there in force in the District of Columbia which are hereinafter specifically referred to and set forth and to use due care in the operation of said taxicab so as to avoid injury to the plaintiff, plaintiff property or others lawfully on said highway.

Yet, notwithstanding their duty in the premises, the said defendants by and through their agent, servant or employee, unmindful of their said duty and wholly disregarding same and the rights of the plaintiff did negligently and carelessly fail and omit to keep a proper lookout; and the said defendants negligently and carelessly failed to bring said taxicab to a stop when they saw or by the use of reasonable care and caution could have and should have seen the said plaintiff's automobile in a position of danger, and negligently and carelessly ran into the said plaintiff's automobile. And the said defendants, Independent Taxi Owners Association, Incorporated, trading as Diamond Cab Company, and Charles W. Sampson, acting by and through their servant, agent or employee, D. F. Stevens, did negligently and carelessly fail to give or sound a timely
3 or adequate warning of the approach of their said taxicab in violation of Article Five, Section Six, Paragraph (d), of the Traffic and Motor Vehicle Regulations for the District of Columbia then and there in force, reading as follows:

Art. V., Sec. 6, par. (d)—“Bicycles, tricycles, and motor vehicles shall be equipped with a suitable signaling device, to be approved by the director, to serve as an adequate warning of the approaching of such vehicle or as a warning of danger, and the use of such signaling device for

purposes other than those set forth in this section is hereby expressly prohibited: Provided, That nothing herein shall be construed as permitting the use of any unnecessarily loud or discordant signaling device, siren, or explosive whistle, and the same are hereby expressly prohibited: Provided, however, That the use on bicycle of any signaling device other than a bell is hereby prohibited."

and negligently and carelessly failed and omitted to have said taxicab equipped with good and adequate brakes in violation of Article Nine, Section Eleven, Paragraph (a) of the Traffic and Motor Vehicle Regulations for the District of Columbia, then and there in force and reading as follows:

Art. IX., Sec. 11, par. (a)—"Every motor vehicle shall be equipped with two or more sets of independently operated brakes which shall at all times be capable of meeting the following requirements."

and negligently and carelessly failed and omitted to pay strict attention to traffic on the highway and be in condition for emergency control of said taxicab in violation of Article Eleven, Section Thirteen, Paragraph (k) of the Traffic and Motor Vehicle Regulations of the District of Columbia then and there in force and reading as follows:

Art. XI., Sec. 13, par. (k)—"No motor vehicle shall be operated with merchandise on the fenders or hood of said motor vehicle so as to obstruct the view of the operator. An operator shall pay strict attention to traffic on the highways and shall at all times be in position for emergency control of said motor vehicle."

and negligently and carelessly operated said automobile at a speed greater than twenty-two miles per hour, a greater speed being not there indicated by an official sign in violation of Article Four, Section Five, Paragraph 3.

4 (a) of the Traffic and Motor Vehicle Regulations of the District of Columbia then and there in force and reading as follows:

Art. IV., Sec. 5, par. 3 (a)—"Twenty-two miles per hour. When equipped with pneumatic tires, and when operated

anywhere in the District except as restricted by the foregoing speed limits.”

and did negligently and carelessly fail to give the right of way to the vehicle being operated by the plaintiff in violation of Article Two, Section Two, Paragraph (e) of the Traffic and Motor Vehicle Regulations of the District of Columbia then and there in force and reading as follows:

Art. II., Sec. 2, par. (e)—“A vehicle approaching an intersection shall slow down and be kept under such control as to avoid colliding with pedestrians or vehicles. Operators of vehicles approaching an intersection shall give the right of way to vehicles approaching from their right; but a vehicle making a right or left hand turn shall yield to through traffic within the intersection or so close thereto as to constitute an immediate hazard.”

And by reason of and as a result of the negligent and careless acts and negligence of the defendants, Independent Taxi Owners Association, Incorporated, trading as Diamond Cab Company, and Charles W. Sampson, acting by and through their servant, agent or employee as aforesaid, said taxicab was caused or allowed to and did run into and strike the automobile of the plaintiff, badly damaging same and throwing her violently about and seriously and permanently injuring her in that she sustained a fracture of the seventh left rib, contusion and echimosis middle left thigh, same below knee, sprained left wrist and strained back; that she was confined to her bed for a long period of time all of which caused excruciating pain, suffering and mental anguish; her nerves and nervous system were permanently shocked, injured and disordered; she has suffered and will in the future suffer great pain and mental anguish because of said injuries. Her bodily health and strength have been impaired and will continue to be so impaired.

5 As a result of the aforesaid the plaintiff has been compelled to expend large sums of money for physicians, hospitals, nursing and other care and for the repair of her automobile. And it will be necessary in the future for her to expend large sums of money to the end that she may be relieved and healed of her said injuries, all to the great damage of the plaintiff in the sum of Ten Thousand Dollars (\$10,000.00).

Wherefore, the plaintiff brings this suit and claims of and from the defendants and each of them the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

CHARLES C. COLLINS,
ALBERT E. BRAULT,
Attorneys for Plaintiff.

Plea of Independent Taxi Owners Association.

Filed October 11, 1932.

* * * * *

Now comes the defendant, Independent Taxi Owners Association, and for plea to the declaration filed in the above-entitled action denies that it is engaged in the business of operating, maintaining, or assisting others to operate and maintain taxicabs in the District of Columbia, as a common carrier for hire or that its co-defendant, Charles W. Sampson, was associated with this defendant in operating and maintaining taxicabs for hire, or that D. F. Stevens was the agent, servant or employee of this defendant, as in said declaration alleged, or that this defendant was acting through any servant, agent, or employee, or that this defendant violated any of the Traffic Regulations as set forth in said declaration or that it violated any duty that it owed to the plaintiff or that it injured or caused to be injured, the said plaintiff in any manner whatsoever.

ALFRED D. SMITH,
*Attorney for Independent Taxi
Owners Association.*

Filed October 11, 1932.

* * * * *

Now comes the defendant, Charles W. Sampson, and for plea to the declaration filed in the above-entitled action, denies that he was assisted by his co-defendant, Independent Taxi Owners Association, in the operation of a taxicab, or associated with said Association in the operation of the taxicab as set forth in said declaration; he denies that he was negligent or careless in any manner whatsoever in connection with the operation of said taxicab on

the day and time in question, or that he violated any Traffic regulation as set forth in said declaration, or that he was in anywise responsible for the injuries and damages claimed to have been suffered by the said plaintiff.

ALFRED D. SMITH,
Attorney for Charles W. Sampson.

Joinder of Issue.

Filed November 15, 1932.

* * * * *

The plaintiff joins issue on the pleas of the defendant filed herein.

CHARLES C. COLLINS,
ALBERT E. BRAULT,
Attorneys for Plaintiff.

Memorandum.

November 23, 1933.—Verdict for Plaintiff for \$1,100.00.

7 Supreme Court of the District of Columbia.

Friday, December 15, 1933.

Session resumed pursuant to adjournment, Hon. Chief Justice Alfred A. Wheat, presiding.

* * * * *

Upon consideration of the motion filed herein, for a new trial, it is ordered that said motion be, and the same is hereby, overruled, and judgment on verdict is ordered.

Wherefore, it is considered that plaintiff recover of the defendants herein the sum of One Thousand One Hundred Dollars (\$1,100.00), together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the defendants by their attorney of record, in open court, note an appeal to the Court of Appeals of this District; whereupon, an undertaking to act as a supersedeas bond is hereby fixed in the sum of One Thousand Five Hundred Dollars (\$1,500.00) and a further undertaking to act as a cost bond is hereby

fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof.

Memoranda.

January 8, 1934.—\$50 deposited in lieu of undertaking on appeal. Proposed Bill of Exceptions and notice filed.

Assignment of Errors.

Filed January 8, 1934.

* * * * *

Now come the defendants, Charles W. Sampson and Independent Taxi Owners' Association, by their attorney, Alfred D. Smith, and say that the Court erred—

8 1. In its ruling as to the admissibility of the evidence as to the general income of the defendant Association.

2. In overruling the defendants' motion for a directed verdict on the ground of contributory negligence of the plaintiff, Mangum.

3. In overruling the defendants' motion for a directed verdict as to the Independent Taxi Owners' Association on the ground that the evidence showed that the cab in question belonged to the defendant Sampson and was operated by the agent, servant and employees of the defendant Sampson.

4. In permitting testimony to be adduced at the trial relative to an insurance fund created by the members of this Association.

5. The court erred in refusing to withdraw a juror and declare a mistrial because of the misconduct of counsel in putting into evidence the existence of an insurance fund maintained by the members of this Association to pay damages incident to the business of operating taxicabs by members of the said Association.

6. And for other errors apparent on the face of the record.

ALFRED D. SMITH,
Attorney for Defendants.

Supreme Court of the District of Columbia.

Tuesday, February 20, 1934.

Session resumed pursuant to adjournment, Hon. Chief Justice Alfred A. Wheat, presiding.

* * * * *

9 Come now the parties hereto by their respective attorneys of record, and thereupon, the defendants by their attorney submit to the Court the Bill of Exceptions taken at the trial of this cause and pray that the same be signed and made of record, nunc pro tunc, which is hereby accordingly done.

Designation of Record.

Filed January 8, 1934.

* * * * *

Now come the appellants, Charles W. Sampson and Independent Taxi Owners' Association, in the above entitled cause and designate the parts of the record which they desire to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. The Declaration.
2. Plea of Independent Taxi Owners Association and Charles W. Sampson.
3. Joinder of Issue.
4. Judgment of the Court, appeal, &c.
5. Memo.: \$50.00 deposit in lieu of bond on appeal.
6. Bill of Exceptions.
7. Assignments of Error.
8. Designation of Record.

ALFRED D. SMITH,
Attorney for Defendants.

January 8th, 1934.—Service of copy Designation of Record, Assignment of Errors and Bill of Exceptions acknowledged this 8th day of January, 1934.

CHARLES C. COLLINS,
Attorney for Plaintiff.

10 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 9, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 81855 at Law, wherein Rosa L. Mangum is Plaintiff and Charles W. Sampson et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of April, 1934.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

11 In the Supreme Court of the District of Columbia.

No. 81,855.

ROSA L. MANGUM, Plaintiff,

vs.

CHARLES W. SAMPSON et al., Defendants.

Bill of Exceptions.

Be it remembered, that at the trial of this case before Chief Justice Alfred A. Wheat, of the Supreme Court of the District of Columbia, and a jury, duly empaneled and sworn to try the issues herein, which trial began on March 19, 1931, and thereafter was further proceeded with, **Rose L. Mangum**, plaintiff herein, being first duly sworn, testified on her own behalf, on direct examination, in substance, as follows:

That she is employed in the Internal Revenue Department of the Government, receives a salary of two thousand

one hundred and forty dollars, less the fifteen per cent cut; that at the time of the accident she was the owner of a Pontiac Sedan said automobile being practically new; that she was proceeding east on "E" Street at 15th; slowed down, looked to right and left, saw no traffic with the exception of one car headed north on 15th Street; did not see anything coming from the left at all; front of car was not more than five feet from west side of intersection at 15th Street and E Street; when about two-thirds way across intersection looked to left and saw taxicab coming at a terrific speed; all she remembered was that she went up in the air; car was knocked close to the Commerce corner, near the southeast corner of Commerce curbing; witness was going slow not more than ten miles an hour, driver of the cab came to side of witness's car; she was lying down, could not move; the emblem on cab was Diamond; she was taken to Emergency Hospital.

Whereupon, the following occurred:

12 "Q. And when you got to Emergency Hospital,
 what was done? A. They gave me two hypodermics——

Mr. Smith: Now, just a moment, I object to any testimony as to treatment administered excepting it be testified to by the physician who administered it.

The Court: The objection is overruled.

Mr. Smith: Your Honor will allow me an exception?

The Court: Yes. She cannot testify as to what the medicine and so forth was, but she can testify to the same things you and I could about what was done. She said there was a hypodermic given."

That they strapped witness's back and side; left there in a couple of hours and went to 100 Maryland Avenue, Northeast, where she was put to bed and family physician called; accident happened about 5:30 in afternoon; doctor strapped witness, gave her some medicine and ordered cold applications; doctor saw her the next morning; next day witness felt great deal of pain, in side and back; was treated by doctor for about two months but has been under care constantly for periods ever since; was under the influence of medicine and could hardly bear pain; away from her employment a

month; does not know how many times she saw the doctor but thinks approximately an average of once a month.

Whereupon, the following occurred:

By Mr. McCabe:

Q. Did you incur expense at the Emergency Hospital in connection with the treatment?

Mr. Smith: That is not the method of proving them. I do not know anything about the values of those services. A doctor can charge anything he pleases and I——

The Court (interposing): The question is now—What is the question?

The Reporter (reading): “Did you incur expense at the Emergency Hospital in connection with the treatment?”

The Court: You object?

13 Mr. Smith: Yes.

The Court: Overruled.

Mr. Smith: And I may have an exception?

The Court: Yes.

Mr. Smith: That is not the proper method of proving records. The proper method is the records of Emergency Hospital.

The Court: I do not agree with you.

By Mr. McCabe:

Q. Will you answer the question? A. Do I have the right to answer?

Mr. McCabe: Yes.

By the Court:

Q. Did you incur any bills? A. Yes. X-ray treatments and strapping.

By Mr. McCabe:

Q. What was your X-ray bill?

By the Court:

Q. Have you got any bill for it? A. About forty dollars, I believe, was my X-ray.

Mr. Smith: That is just the vice of it. These things are all matters of record.

The Court: Now, Mr. Smith, don't you think I could testify if a doctor rendered me a bill for a certain amount?

Mr. Smith: You can, yes. But that is not proof of the fairness of that charge. He may render the bill for that amount but——

The Court (interposing): It is a fact that they may be taken into consideration.

Mr. Smith: This lady says "about." She does not even know. There is, certainly, a record.

Mr. McCabe: If your Honor please, in answer to that objection, my thought is this: she can testify as to the amount of the bills that were rendered her. The reason-

14 ask the doctor the same question, if he submitted the bills and will prove the amount of those, and he can then attack the doctor as to the reasonableness of the bills.

The Court: There is no doubt about that. She cannot testify about what it was. She ought to know.

Mr. Smith: Your Honor will allow me an exception to that ruling?

The Court: Yes.

does not know the amount of the bills but thinks it was \$40.00 for two X-rays and strapping, all of which went in the subject of the objection of the exceptions of the defendants. Doctor's bill One Hundred Thirty-Five Dollars; prior to the accident her physical condition was very good; had an estimate made for damages to car.

Whereupon, the following occurred:

Q. I will show you an estimate and repair bill on this car (handing a paper writing to the witness) and ask you if this was an estimate and repair bill that you had made on your car after this accident.

Mr. Smith: I object.

The Court: On what grounds?

Mr. Smith: On the ground that there is not——

The Witness (after examining the paper in question): That is.

Mr. Smith: I object on the ground that there is no claim in this declaration for this item of damage.

The Court: Let's see.

(The Court examined the papers filed in the instant case.)

The Court: It states that as the result of the aforesaid the plaintiff was compelled to expend large sums of money for physicians, hospitals, nurses and other matters and for the repair of her automobile.

Mr. Smith: Yes, but there is nothing in here to indicate any charge of any type or character whatsoever as to that amount or that need. This is an action for personal injuries.

The Court: As I read that, she includes an item for the repair of her automobile.

15 Mr. Smith: I submit that there is nothing here which justifies the carrying through of this charge and, in addition to that, this is not the proper method of proving it.

The Court: That second objection, that goes to the same point that you have already stated, but I do not see how that differs in the physicians, hospitals, nurses and everything else. It is one of the elements of damage.

Mr. Smith: Here is the situation: There is absolutely nothing in the world here in the shape of testimony as to what the condition of the car was except it was a new car, which does not amount to anything; there is no evidence here of any mechanic——

The Court (interposing): That is what he is trying to prove. The objection is overruled.

Mr. Smith: Your Honor will allow me an exception?

Estimate was made immediately after accident; amount Two Hundred Thirty-One Dollars, Sixty-Seven Cents; bill was paid by plaintiff.

Whereupon the following occurred:

By Mr. McCabe:

Q. Was that the estimate you had made? A. Yes.

Q. When was that estimate made? A. It was immediately after the accident. I had the man to come up to the building to see the car, and then they towed it down to Steuart's and examined it and made an estimate and submitted it to me.

Q. And what was the total amount of the repairs on that car? A. Two hundred and thirty-one dollars and sixty-seven cents.

Q. And did you pay it? A. I did.

Q. You did pay it? A. Yes.

16 Mr. McCabe: I offer this repair bill in evidence and will ask that it be marked for identification, and I will prove it when the mechanic gets on the stand.

Mr. Smith: Let me see it.

* * * * *

The Court: I assume this will be followed up?

Mr. McCabe: Certainly. I will put the mechanic on the stand.

The Court: Of course, the estimate is not proof of what was done.

Mr. Collins: The mechanic is waiting in the witness room now, sir.

By Mr. McCabe:

Q. Now, shortly after this accident, did you have a photograph made of the car? A. Yes. The man came up to make the photograph while it was parked, before Steuart got it, in the back of the Methodist Building, I think it was the second or third day after the accident. I would not let it be disturbed until it was photographed.

Q. I will show you this photograph—and I will connect this up with the photographer when he gets on the stand—and I will just ask him to prove it then. Do you object?

Mr. Smith: Yes, I object.

By Mr. McCabe:

Q. Is this the photograph of your car taken at that time (exhibiting to the witness a photograph)? A. (After examining the photograph in question) Yes.

Q. Will you look at both photographs? Here is another (handing a photograph to the witness). A. (After examining two photographs) Yes.

Q. Was that your car? A. Yes.

Q. A picture of it? A. Yes.

Q. After the accident?

17 Mr. McCabe: I am not offering them in evidence just now.

Mr. Smith: I am objecting to this, your Honor, for the reason that it is not properly identified.

The Court: The objection is overruled.

Mr. Smith: And an exception?

The Court: Yes.

Mr. McCabe: That is all. You may take the witness.

On Cross-Examination, witness testified that she drove back of the White House; that she came through on to 15th street on what is now E Street; that she looked to her left when she was not more than five feet to the west intersection line; that there was a high parkway on the left and no pavement; does not know how high the parkway was; she had the- gotten into Fifteenth Street when she looked to the left but was about five feet from intersection; meaning by that about five feet from west line of Fifteenth Street; that she could see up Fifteenth Street at least forty or fifty feet; that she kept on looking to right and left; did not see him until she was two-thirds across intersection when he was bearing down on her at a terrific speed; that she had been looking all the time there was nothing to obstruct her view; that immediately following the accident she was knocked unconscious and regained consciousness a few minutes afterward; that the taxicab driver drove witness to hospital in her own car; the cab driver stayed there until she was discharged from hospital and took her home in her automobile; does not know who strapped her back in hospital; Doctor Reeves, her family physician, did not take off strapping placed there by Doctor at Hospital; that he put more strapping on over what was already there; she went back to hospital a few days later for X-ray; that she had two sets of X-rays made, three in each set; did not see cab until it was upon her; the head of her car was two-thirds way across intersection; cab was so close it was impossible for her to step on gas and get out of way; struck the rear end of her car; witness was knocked over on Mrs. Journey; at the time driver came over and talked to her she was lying down, holding her side; Mrs. Journey had been sitting in front seat alongside of witness; witness was unconscious and doesn't remember but Mrs. Journey was on

18 front seat with her; witness was lying down ill and unconscious; witness did not talk to driver of cab; rode in front seat to hospital; did not have to move her; she had been knocked so far on front seat that she could sit on driver's seat and Mrs. Journey was on seat holding her; witness went back to work first day of August, since that day has worked regularly; at the time of the accident was staying with Mrs. Journey at 100 Maryland Avenue, Northeast; witness testified on re-direct examination that Mrs. Journey had filed a suit against her and Diamond Cab Company; that there was a side walk between Fifteenth Street and embankment.

On Recross Examination, witness testified that she did not recollect receiving a copy of subpoena #82,133, being suit against Mangum and Sampson but that was not suit she referred to.

Whereupon, **Dr. William P. Reeves** was called as a witness for and on behalf of the plaintiff, and having been previously duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That he was a graduate of Georgetown Medical School and practiced general surgery; that he first treated plaintiff on July 6; that she was in a high degree of shock, thought she had a fracture of the seventh rib, had bruises, of the left thigh and also below the left knee; sprained left wrist; back was sprained; witness strapped plaintiff's back including sacroiliac; that he gave her a prescription; saw her next day; was not much improvement, slight improvement; he continued to treat Mrs. Mangum at the house for about two weeks; that during that period of time she could get up; she did get up, most of time in bed; that after period of two weeks she came to his office; that she went to see him; about two months elapsed between her next treatment at the office and before; after she started coming to his office, he saw her every other day for a period of two or three months; thinks it takes about six months for a rib to heal before it is anyway near normal; thought it caused

a traumatic pleurisy; pleurisy is an inflammation of
19 the pleura which is the covering of the lungs;
thought he found a traumatic pleurisy in the plain-
tiff; thinks he treated her for about four months for that
condition; that that condition has cleared up;

Whereupon the following occurred:

Q. Now, since the date of this accident, what was the condition as you observed it as regards her nervous condition?

A. I think she——

Mr. Smith (interposing): Just a moment. I object at this time to any testimony regarding the general nervous condition of Mrs. Mangum. The Court of Appeals has held where you recover for personal injuries you cannot recover for general nervous condition.

The Court: Do you object to any testimony about her condition before the accident happened?

Mr. Smith: No, I want him to testify to the true condition, but when you get to this condition of nervousness I object to that.

The Court: What is the question you object to? Read the question.

The Reporter (reading): "Now, since the date of this accident, what was the condition as you observed it as regards her nervous condition?"

The Court: You object to that?

Mr. Smith: Yes.

The Court: I overrule the objection.

Mr. Smith: And I note an exception.

The Court: Yes. That is a condition you could say with reasonable certainty flowed from this accident. Of course, it has to be confined to the direct result of this accident.

Mr. McCabe: I will ask the question this way, if your Honor please. If you will strike out the other question——

20 Mr. Smith (imposing): No, I have an exception to his Honor's ruling. I want that to stay.

The Court: Yes.

Mr. McCabe: I will leave it in.

The Court: I want you to have the final benefit of the exception. You prefer to have the exception stand with the answer or without?

Mr. Smith: I have objected to this line of examination and have stated my reasons and your Honor has overruled them. He wants to get rid of that.

The Court: He wants to withdraw the question and you object.

Mr. Smith: Yes. That takes out your Honor's ruling.

The Court: He can——

Mr. McCabe (interposing): What?

Mr. Smith: I say if you do that it takes out the Court's ruling.

The Court: He can withdraw the question if he wants to. It has been answered.

Mr. McCabe: I will withdraw that question, and I will ask this question.

Mr. Smith (interposing): To that I object and I note an exception to your Honor's ruling.

The Court: Yes.

By Mr. McCabe:

Q. Now, Doctor, what was the nervous condition as you observed it of Mrs. Mangum resulting from the injuries received in this accident since the date of the accident, while she was under your care?

Mr. Smith: I object to that for the reason that I stated before.

The Court: And the objection is overruled.

Mr. Smith: And you will allow me an exception?

The Court: Yes.

By Mr. McCabe:

Q. Will you answer the question, Doctor? A. She was in a high degree of shock.

Mr. Smith: I move that go out as not being responsive.

Mr. McCabe: He has not finished his answer.

The Witness: Evidenced—How was that?

By Mr. McCabe:

Q. Will you go ahead, Doctor? A. Evidenced—of course, she had injuries sufficient to produce a high degree of shock, but I believed that Mrs. Mangum was in a high degree of shock at that time.

21 Q. Now, as time went on—— A. (Interposing.)
Yes, sir.

Mr. Smith: Just a moment. I ask your Honor that that go out. It is not responsive to the question.

By the Court:

Q. What is shock, Doctor? A. What is shock?

Q. Yes. A. There has never been any satisfactory definition of "shock," but it is a state of the nervous system deviating from normal.

The Court: All right. Go on.

Her nervous condition is not completely recovered from accident; has treated her from date of accident until date; treatment consisted of rest; gave her sedatives, meaning by that a mild narcotic to hold down tension of nervous system; that she is under care of witness; last time he saw her was yesterday; did not make complete examination; saw her back and strapped her back and kept it strapped about a month; that she was given colchichine and salicylate of soda intravenously; thinks that that does good in a muscular condition of strain; he gives it in cases of backache; took strapping off to see if she could get along without it; plaintiff was a great deal better; no further evidence of back condition; he really thought that the entire condition would have cleared up by this time; should clear up in probably two to three months from present time; additional treatment of heat, infra-red and alpine light which he thinks does a lot of good; thinks he gave her about a dozen; says plaintiff owes him One Hundred and Four Dollars to present; showed a receipt for Twenty-five dollars which witness thought was plaintiff's previous
22 bill.

Thereupon the whole line of questioning as to bills was withdrawn.

On Cross-examination, witness testified that he keeps records in his office showing what he finds wrong with patients; that he has a record of diagnosis of Mrs. Mangum's trouble.

Whereupon he was asked to produce the record, which he did and testified that what he produced was a copy of the original record; that he had a record of visits made to Mrs.

Mangum; that he produced copies of the record; identified one paper as first record; showed balance of Forty-one dollars; balance on account Fifty-One Dollars that he showed the plaintiff on the 6th of July which showed the first charge for attending to her after the injury and that showed a balance of Forty-one dollars; that the balance of Forty-one Dollars was old bill; that the Forty-one Dollars had nothing to do with bill for services rendered growing out of accident; that the \$10.00 item had nothing to do with it.

After an agreement of testimony regarding mixed-up accounts and endeavoring to find out what the bill of Dr. Reeves was for attendance upon Mrs. Mangum, Doctor testified that he had itemized bills at home; that of the One Hundred and Four Dollars which was due, Fifty Dollars was for testimony in this case; witness thinks his bill is Fifty-one Dollars; witness included Fifty Dollars for testimony; that the charges were One Hundred and Four Dollars regarding the testimony at Fifty Dollars added to the Fifty One Dollars making One Hundred and four dollars; witness testified that the correct bill is Fifty-one Dollars.

Whereupon the Court adjourned.

23 Thereupon **Joseph C. Elbert** was called as a witness for and on behalf of the plaintiff, and having been previously duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That he is Computing Engineer, District of Columbia Government; that the width of the intersection of Fifteenth Street at E Street is sixty-eight feet; from curb to curb; E Street from curb to curb, fifty-six feet; from the middle entrance of the park on the west side of the intersection on a line to the east side of Fifteenth Street, even with the curb, the distance is seventy-nine feet; plat was made November 15, 1933, but since that date the intersection has been changed; a walk on the northwest corner of street. The measurements were as of the date of the accident.

Thereupon **Arthur P. Moore** was called as a witness for and on behalf of the plaintiff, and having been previously duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That his business is that of repairing automobiles; on July 6 was employed by L. P. Steuart, Inc., as a super-

visor for repairs of automobiles; that he examined Mrs. Mangum's car; that it was a Pontiac 1932; frame was bent; left doors bent; after examining plaintiff's exhibit #1, being an estimate, testified that he had it typed in the office; damage to car both front fenders; both left fenders bent, running board and brackets; left door bent, woodwork broken; center post that holds door closed broken; frame buckled and metal floor board buckled, axle housing bent; rear axle housing and left rear wheel, left axle was bent; does not remember making an estimate of the costs; fair and reasonable charges was \$230.00; that the damages were repaired by L. P. Steuart; repairs made under witness's supervision, running board could have been repaired;

24 witness does not remember whether running board could have been repaired, any charge for a new running board; does not remember whether the left rear apron could be repaired or not but the price of the estimate is for a new one; does not remember how bad it was bent; the axle housing could not be straightened satisfactory; does not remember how badly it was bent; could not say whether the car in the condition he saw it could be driven or not; was in the shop the better part of the week; sent to the factory for some parts; does not remember what would be fair and reasonable charge for straightening fender; does not remember what would be fair and reasonable charge for straightening frame in this case; could not tell how bending of frame threw wheels out of line; man by name of Jones fixed frame; man by name of Burroughs and Whitaker did the body work; does not remember replacing any glass in the car; witness would not be able to state what is a reasonable charge to install woodwork, center body post; new woodwork on both doors, straighten metal on both doors, straighten gas tank shield, straighten rear metal floor boards, refinish damaged parts of body; has no idea what a fair charge for that work would be; from photograph does not think running board could be straightened and put in good condition.

Whereupon it was moved that the entire testimony of witness go out, which motion was overruled and an exception noted and allowed.

Whereupon **Leo A. Haller** was called as a witness for and on behalf of the plaintiff, and having been first duly sworn was examined and testified as follows:

That he is a Civil Engineer employed by the District of Columbia Government; made measurements at Fifteenth and E Streets; that the embankment on the northwest corner of Fifteenth and E Streets is five feet ten and three-quarter inches high.

25 On Cross-examination testified that that was from the existing sidewalk; that the pavement has one and one quarter inch fall from the bottom of the wall to the curb and there is a dip of about five inches to the gutter; that that figures about seven and one half inches which would make the top of the wall from the street level over six feet; that on top of the wall was a coping of six inches; there was a soil or parking from five to six inches higher than the coping; that there was shrubbery on top of that; there there was spruce trees which was about five feet high; set back about five feet from the edge of the wall.

On Redirect Examination, witness testified that this walk set back twenty-one feet seven and one-quarter inches from west curb of Fifteenth Street; that it is about ten feet from north curb of E Street.

Whereupon **Frank R. Nymark** was called as a witness for and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

That he is a commercial photographer; in July, 1932, made photographs of Mrs. Mangum's car; pictures were taken July 8; were taken in the court behind the Methodist Apartment Building.

Photograph was marked Plaintiff's Exhibit #2.

Whereupon **Vinencio Cruz** was called as a witness for and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

That he is a photographer working for Leeth Brothers; that in July, 1932, he took a picture of Mrs. Mangum's car; that picture was taken July 13, 1932, that it was taken in back of apartment where Mrs. Mangum lives; picture was marked Plaintiff's Exhibit #3.

26 Whereupon **Carrol William Dunning** was called as a witness for and on behalf of the plaintiff, and

having been first duly sworn, was examined and testified as follows:

Witness testified that he was forty-three; was Assistant Director Process and Marketing Division, Agricultural Adjustment Administration; he was acquainted with Mrs. Mangum; for the last two years he had seen her about once a week or at least once every two weeks; for the last two years he had seen her very often; that prior to July 6 her general condition of health was very good; saw her about two and one half weeks after accident; that at that time Mrs. Mangum was very nervous he saw her in the Methodist Building; since the time of the accident he had seen her at least once a week, many times more than once a week; that she was in a nervous state and when they drove three or four times it was necessary for him to take the wheel because she could not drive any further; he often had to park the car because she could not park on account of turning the wheel; in cleaning her apartment if she happened to lift anything heavy she would have to rest up the next day, and sometimes not go to office, moving a davenport or anything like that; never went walking with her to any extent; because she generally drove; further that she was in a high nervous state; right nervous, not being able to drive without being nervous, would have to go to bed; that Mrs. Mangum told him that; has observed since accident that she was not able to get around as well as she did formerly because she seemed weaker.

Whereupon **John J. Cash** was called as a witness for and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

27 Was a member of the Metropolitan Police Force; that he went to the scene of the accident on July 6; that there was a woman named Rose Mangum whom he identified was at the scene of the accident; that she was driving a Pontiac sedan; witness did not see accident; when witness arrived at scene of accident, her car was in the middle of intersection facing toward park between Pennsylvania Avenue and E Street in a northeast direction; that Mrs. Mangum was sitting at the steering wheel resting her head in her arms on the steering wheel; she was taken to the hospital in her own car by the cab driver who had been in collision with her car; taxicab was in middle of intersec-

tion facing south; that the cab driver admitted he was driving the taxicab; that the cab had the insignia of the Independent Taxi Owners Association on it; was driven by David Francis Stevens; cab was owned by Charles W. Sampson; that he did not ask driver how accident happened; that he was not acquainted with any of the parties to the accident; that the taxicab that he testified about was involved in the accident; Pontiac seemed to be badly damaged in the left center; including tires and left running board front fender of taxicab was pushed forward so that it had to be pulled out before you could drive the cab; that it was against the tire.

Thereupon **Dr. W. P. Reeves** a witness previously sworn, was recalled and testified further as follows:

About his charges for visits to Mrs. Mangum July 6, 1932, the first charge being \$10.00, the next was \$5.00, the third one was \$5.00; witness testified to a great many of visits after August 8, on charges of \$3.00 apiece through October, stating that all of these visits occurred in 1932; but finally arrived at the conclusion that he was mixed
28 up and the visits after October 3 were in 1933; that his last visit immediately following the accident was August 1, 1932, and his next visit August 3, 1933; that the visits after August 1, 1932, during the months of August, October and November were in 1933; that he thinks he made some visits but they were not on the record; costs of medical treatment, \$79.00.

On cross-examination, Doctor testified as follows: That there was a copy of the records that he had down in Court before; that he did not bring the originals; that the records produced by the witness of charges rendered for services in connection with the accident were hopelessly mixed up so that witness testified that the record read upside down and backwards; that this started at the bottom and read up.

Whereupon the slips produced by witness was offered in evidence as Defendant's Exhibit Number 1.

When he examined Mrs. Mangum at first found her in bed; that he found straps on her back on the left side; these straps covered the seventh rib; down, indicating about here, the seventh rib; that it was a fixed rib; that

the strapping covered the rib and went about four inches below the rib; that he strapped it completely; did not remove the strapping; that he put the additional strapping right over the top and extended it further down and around; found a bruise on the middle third of the thigh between the hip and the knee about four inches long and an inch and a half wide on the right thigh; bruised three or four inches long and an inch wide on the foreleg; no abrasion; that she was in the house about two weeks after the accident; she developed traumatic pleurisy in a week's time while she was confined to the house; that she came

29 to the witness's office about two weeks after the original injury and in that period of two weeks had developed traumatic pleurisy; that she went out while she still had the pleurisy; the treatment used by witness was the intravenous injection above referred to for leg treatment; the only other treatment used for the pleurisy was light treatment for inflammation of the pleura; pleura is not a form of pneumonia; pneumonia involves the lungs; this injury did not involve the lungs; involves the covering of the lung; that the fracture of the seventh rib was just a plain fracture; takes about two months for rib to knit; when a fracture occurs, nature secretes a substance that turns to bone, and that forms a callus of the bone in the course of knitting nature secretes somewhat more than is necessary; that it leaves a ridge where the fracture occurred and then nature absorbs that ridge; witness thinks traumatic pleurisy.

Witness testified as follows: "Traumatic pleurisy I think is due to, well, she had a blow on that side, a heavy blow to fracture that rib. Then after that rib is fractured, as I said before, the X-ray examination of the ribs, it is rather indefinite; in some cases it cannot be shown, and I do not believe they could show a fracture of the rib if you should be the patient, on account of the thickness."

Inflammation causes traumatic pleurisy; that there was no puncture of the abdominal cavity; that the pleurisy condition existed about four months and that during that period of time there was inflammation of the pleura; this condition existed from the time of the accident up until the end of the four months; gave her no treatment aside from the drugs mentioned except light treatment and keeping it properly strapped.

Whereupon the following question was asked:

Q. You say that lasted for a period of four months? A. Yes.

30 Q. How is it, Doctor, that there is no charge in this list for any of those treatments after August 1st? A. 1932?

Q. Yes, sir. A. Well, I think there is a charge. I do not believe the records are very complete, Mr. Smith.

Witness was asked if there was any outward indications or bruises found to give injury to the sacro-iliac joint which might be a strain; witness answered, "He strapped her down, covering the sacro-iliac and down about the end of the coccyx; strapping was a heavy tape strapping; strapping stayed on about three weeks; outside of the injection of the drug mentioned, the only other treatment was a sedative for the nerves; witness went back to his office during the noon recess, collected plaintiff's record; it was almost impossible to get any other records; secretary made a copy which he brought down; that the records produced in court were the only records of the witness; his secretary looked to see if there was any other record after August 1st, of the treatment of Mrs. Mangum in connection with the injury; thinks he has other records showing a treatment after August 1st, 1932; that none of the slips show any treatment after August 1, 1932, until August 3, 1933; the original record of the examination of Mrs. Mangum was not in court; does not keep a record of every treatment.

On redirect examination, witness testified as follows:

That the age of patient would have an effect upon the healing of the rib.

Whereupon **Mae C. Manger**, was called as a witness for and on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

31 That she is employed at the office of the Independent Taxi Owners Association as a clerk; that there was a switchboard maintained in the office, over which calls for cabs are received; that Mr. Gauges was in charge a part of the time; witness's husband's name, Andrew;

he is Secretary and Treasurer of the Association; witness gave the name of some of the Board of Directors; Mr. Davis is President, Mr. Haines is Vice-President; that the witness does not know how the corporation raises its income; witness receives applications for new members who desire to join the Association; does not have anything to do with the granting of the applications; that there is a Diamond Service Company, maintains a gasoline station; that application- for membership are received, turned over to the Board of Directors, and are then sent back to her when they are acted upon; applicant appears before Board of Directors; initiation fee varies; witness did not know the exact amount of initiation fee at the time she was testifying; amount charged for membership depends upon conditions surrounding the applicant; that to be an associate member would be \$100.00, to become a full member \$1,000.00; that the associate member would have to pay dues; witness did not work on the books and did not know what the dues were; that the present rate has been changed recently; witness thought it was \$7.50 a month, she was not sure; before that it was \$15.00 a month; paid the same amount for each cab; that depended upon the day of the month the cab was put on the street; witness could not tell what the rate would be on a specific time in the month; that it was \$15.00, but it was on the 20th or before; witness could not tell right now what the rate for two cabs would be; some two months ago it would have been \$10.00 a cab; testified as to who had charge of said books; that Mr. Manger and Mr. Davis sign checks; that Mrs. Manger's resident home address was given; did not know where Mr. Manger was at present time; could
32 not tell whether Mr. Manger would get home or not; witness was the oldest girl in their office; in absence of Mr. Manger or Mr. Davis, she would have charge of office; knew where some of the books are; does not know where the books showing disbursements are kept; Mr. Manger would be in charge of books showing who was a member on July 6, 1932; witness does not know anything about operation of Diamond Service Station; witness gives out cab numbers; when an applicant is accepted for membership, witness gives out numbers; does other clerical work; answers telephone, assists others in office, general clerical work; that when an applicant gets a number he is placed

on the list of active members; number is given and is placed in cab book before can can display the colors, a letter; goes to the Director of Traffic and another to the Public Utilities Commission; showing that the applicant is a member of good standing; that the Association does not maintain paint shop; cabs are inspected after they are painted but not by witness; cabs are inspected by members of the organization, usually Mr. Hipson, the personnel officer; the applicant is given a slip that the cab is "O. K."; then the taxicab has to be inspected by the Public Utilities Commission and Traffic Bureau; then they have to get their "H" tags, and after tags are put on you can operate cab; Diamond Service Company maintains a gasoline station; witness does not know anything about it; is run separate from the Association; does not know what is done with the money received from initiation fees and from the drivers each month; she does not have charge of that money and does not know; money is used in paying operating expenses, and paying for accidents; does not pay for gasoline and none of the money goes to Diamond Service Company.

Whereupon the following occurred:

The Court: What do you mean when you pay for accidents?

The Witness: Well, cases settled against the company.

By Mr. Collins:

33 Q. You mean if one of the owners, a duly qualified owner, is involved in an accident, that your company makes payment in settlement of those claims; is that what you mean? A. Not in all cases, no.

Q. In some cases do you? A. Yes, in some cases we do.

Q. You do in some cases?

Mr. Smith: I move for the withdrawal of a juror and the declaration of a mistrial. I have tried my best to stop this thing because the records could have been brought to show the facts. Now, this gets into the question of insurance.

Mr. Collins: There is no question of that kind raised here.

Mr. Smith: It is a question of that kind, you can't get away from it.

Mr. Collins: She said they paid for accidents.

Mr. Smith: Because her testimony at best is a lot of hearsay. This lady does not know. She is told, though she does not know.

The Court: She said she does know some things.

Mr. Smith: There are necessary books and records that would show if they want them. They have never subpoenaed the books and records in this office.

Mr. Collins: We are going to do that.

Mr. Smith: I am talking about what has been done.

The Court: I am going to overrule your motion.

Mr. Smith: An exception.

Witness does not know the whereabouts of Mr. Manger; he had been home some time during — morning; witness produced book that showed some of the disbursements of July 6, 1932; witness testified that there was trustees' account book; witness was shown the book and identified it as a cab book; that they had in the office; book showed the income of the Association in 1932; book was known as cash receipts book; each man has a ledger page in the book which keeps a record of his personal account with the Association; the book accounts receivable, cash disbursement book; if books were out of file case it would take about an hour to go up and get them.

Whereupon different girls from the office staff and books were brought in accordance of an agreement between counsel. Witness does not know where the charter of the Diamond Cab Company is.

Thereupon **Charles W. Sampson**, one of the defendants herein, was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That he is one of the defendants; that he was the owner of the taxicab involved in the accident; that he was receiving the income from that cab; that he was a member of the Independent Taxi Owners Association at time of the accident; that the cab had the colors painted on the cab similar to that belonging to members of the Association; that at the time of the accident a man named Stevens was driving the cab; that the witness paid the Association dues; that he paid for services rendered; he thinks it was \$15.00 a month;

received telephone services through call boxes; that he believed that diamond emblem was on the boxes; if anybody wanted a cab call could be dispatched through a box and the cab would answer that call.

Whereupon the following occurred:

Q. What were the other services you received? A. Part of that money we contributed to sort of an insurance.

Mr. Smith: Just a moment. I am now objecting and ask that a juror be withdrawn and a mistrial be declared.

The Court: This matter has got to be settled. I understand Judge O'Donoghue has been through it.

Mr. Smith: Certainly your Honor sustained a similar motion here a few days ago. There is no reason why this should be gone into for the purposes of establishing a liability for a tort supposed to have been committed by
35 a member of this association. If this man maintained an insurance fund of his own, it would not be a proper matter to go before the jury except in aggravation of an existing situation.

Mr. Collins: He did not say that.

Mr. Smith: He did say that.

The Court: I am a little wiser than I was two or three weeks ago. I am going to let this evidence go in and see what the result will be.

Mr. Smith: Your Honor will allow me an exception to that ruling?

The Court: Yes.

Mr. Collins: Your Honor, I should like to approach the bench to discuss this matter with you.

(At this point counsel approached the bench, where the following occurred:)

Mr. Collins: I should like to prove by this witness that this is not an insurance or sinking fund but a fund which is used by these drivers from time to time to pay certain claims.

Mr. Smith: It is an insurance fund and is used for that purpose, and you know it.

Mr. Collins: I do not want to ask that question if your Honor feels that it might be misleading to this jury.

The Court: My position is that if I should allow this whole thing, so far as you choose to go into it, to be brought

out, then somebody eventually has got to decide whether there is liability on the association. The only way it can be done is to have it presented. That would be contrary to the action I took once before, but the way it arose once before is a little different from what it is this time. As I said a moment ago, I hope I am wiser than I was two or three weeks ago. I have learned from experience. I am going to let this go in.

Mr. Collins: Does your Honor believe that I am within my rights in inquiring further about this fund?

36 The Court: I do not want to advise you, but I would receive evidence to show just what this fund was—accurately, fully, and fairly.

Mr. Smith: I want this record to show that this fund is governed by a written contract between these men and the association. I am objecting to this and I ask for an exception.

* * * * *

By Mr. Collins:

Q. What is the sinking fund you spoke of a moment ago?

A. As far as I know, we paid our dues at the end of the month for our subscription to our service. It was made part for service and part for the sinking fund.

Q. Do you know what is meant by the sinking fund? A. I imagine——

Q. (Interposing.) I do not want to know what you imagine; it is what you know. A. I don't.

Witness was not compelled to buy gas from the service station or anywhere else;

Whereupon, the following occurred:

Q. Was there an arrangement whereby you could purchase gasoline from the association at the time this accident occurred? Was there a service station maintained by the Association?

Mr. Smith: I object to that. The testimony has already been brought out by your own witness that the service station is a separate, independent corporation. Mrs. Manger testified she knew nothing about it. She was your witness.

The Court: I will overrule the objection.

Mr. Smith: Exception.

By Mr. Collins:

A. Is there a service station maintained by the Independent Taxi Owners Association since that time?

Mr. Smith: I object.

The Court: Overruled.

Mr. Smith: Exception.

The Witness: As far as I know, it was not maintained by the association.

By Mr. Collins:

Q. Is there a station in any way connected with the association?

Mr. Smith: I object, your Honor, to his leading his own witness. It is not a cross-examination problem.

37 The Court: Objection overruled.

Mr. Smith: Your Honor will allow me an exception, please?

The Witness: As far as I know, several drivers got together and subscribed money to start this station for their own benefit. It had nothing at all to do with the officers at all—with the association. As far as I know, it was an entirely different project.

By Mr. Collins:

Q. Was there any other service that you received besides what you outlined to us? A. I don't think so.

Q. What did you pay to join this association? A. I believe it was \$105 at that time.

Witness testified on examination that his cab was damaged to the extent of \$5.50; right front fender and bumper were slightly bent; witness did not see the accident; Stevens who was driving the cab was the witness's employee; paid him on commission basis.

Thereupon **Alfred D. Smith**, attorney for the defendants herein, was called by counsel for the plaintiff as a witness, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand, and upon examination, testified as follows:

That he was attorney for the Independent Taxi Owners Association, first employment being in 1926; thinks he became attorney for them in 1927; when he filed a number of petitions for injunction against former members of the Association; that the basis of said injunction was unfair competition in representing themselves to the public as members of the Association; witness does not know what the costs are to belong to the Association; that the organization is for the mutual benefit & protection of independent taxicab owners engaged in the taxicab business; the Association services rendered for which the members pay for regulations by a written subscription blank; telephone switchboard and branch stations about the city; men represented as collective body by officers of organization; hearings before Congress; legislation pending which may or may not be beneficial to taxicab business in appearances and representations before the Public Utilities Commission; certain part of advertising for benefit of membership; representations in court involving traffic regulations, etc., construction of traffic regulations, and police regulations involving taxicabs; witness's office in Columbian Building

38 and he has a number of telephones; some of telephones are listed under the Independent Taxi Owners Association in connection with the system; one of these telephones is for claims department; claims department maintained by the Independent Taxi Owners Association; the claims department signified that it is the insurance department Association membership; fund maintained by the members for their protection; the funds are maintained by the men by monthly payments in the shape of premiums under written agreement; the fund belongs to the men and is administered by the Association as trustee for membership; banked by the Association as trustee; checks are signed by President and Treasurer; funds are used same as any other insurance fund, to pay claims growing out of accidents had by members of the Association; witness represents the Association as trustee which is all a matter of written contract.

Whereupon the following occurred:

Mr. Smith: Your Honor, I am wondering just how far I am getting into a jam here about confidential communication. I certainly am going to stop now unless the Court directs me to continue.

The Court: You have a right to object. What was the question?

The Reporter (reading): "A. When you decide that a claim should be paid what do you do?"

The Court: I think that is going a little far, myself. It is a question that covers a pretty wide field.

Mr. Collins: Possibly I can revise the question and withdraw that one.

By Mr. Collins:

Q. Do you draw an order on some one for payment of these funds in the trust fund? A. I decline to answer any question. I think they are confidential in the conduct of my office for the association.

Mr. Collins: May we have a ruling?

The Court: What was the question?

The Reporter (reading): "Q. Do you draw an order on some one for payment of these funds in the trust fund?"

The Court: Do you mean, Does he personally
39 do it?

Mr. Collins: Yes.

The Court: That is, after it has been decided to settle the case?

Mr. Collins: Yes.

The Court: I do not think it is confidential. You cannot ask him about any particular case. You could not ask him whether he advised a settlement, but after it has been decided by somebody that the case should be settled, I do not see any reason why you should not say whether you draw the order.

Mr. Smith: I want to say this: I have answered questions very far afield about certain connections of this organization about which I have some very serious doubt in my mind as to whether I had any right to disclose or not. He is going into the workings of my office, as to the distribution of funds, instructions I may give to my clients as to what he or she shall do and what I say shall be done. That is certainly asking me to disclose relations, and that is improper under the law. That is all it amounts to.

The Court: I am going to be perfectly fair to you, Mr. Smith. I do not believe a lawyer should be required to divulge any confidential communication as that is generally understood.

Mr. Collins: If your Honor please, if there is any question at all as to this confidential communication, perhaps I would prefer to withdraw the question.

The Court: I think there is some question about it.

Mr. Collins: May I withdraw the question at this time?

The Court: Yes.

Mr. Collins: That is all.

(The witness thereupon was excused and retired from the witness stand.)

All of which testimony as to the sinking fund was taken subject to the objection and exception granted.

40 Whereupon, **Chesley W. Journey** was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand; whereupon the following occurred:

Witness testified that he was husband of passenger in the car with Mrs. Mangum; and that she, Mr. Journey, was too ill to attend court.

Whereupon Alfred D. Smith, attorney for defendants herein, was recalled by counsel for the plaintiff as witness on behalf of plaintiff:

(Witness produced certain contracts purporting to be signed by Mr. Sampson, copies of which are attached hereto and marked plaintiff's exhibit- 5 and 6.)

By Mr. Collins:

Q. This payment relates to the form of payment of claims, does it not? A. Yes.

Q. The insurance fund you have been talking about is a sinking fund in this contract? A. That is correct.

Q. There was not any mention of the term "insurance"? A. No, but it is.

Q. Does the Independent Taxi Owners' Association have a license to do an insurance business in the District of Columbia? A. No—at least I say no; not that I know of.

Q. This fund that we have been talking about all morning, out of which funds are paid, is the same fund identified and described in this agreement of the Independent Taxi Owners' Association with Mr. Sampson? A. Yes.

41 Whereupon, further testimony was taken regarding the insurance fund and introduced in evidence; and the charter of the corporation, Independent Taxi Owners Association, was offered in evidence and marked Plaintiff's Exhibit Number 7.

Thereupon **Francis P. Gauges** was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand, and, upon examination, testified as follows:

That he is employed by the Independent Taxi Owners Association as chief dispatcher; switchboard maintained in the office of the Association; calls are received from the public, are dispatched from the call boxes; that they are dispatched to the nearest call box to where the call comes from; the driver answering gives number of cab; does not know anything about how numbers are assigned; he has a list of numbers at switchboard; when a call is sent out the driver gives his number; if he is in good standing he takes the call; that he was employed in July 1932 in this same capacity.

42

PLAINTIFF'S EXHIBITS 5 & 6.

Copy.

Agreement made this — day of —, 19—, by and between the Independent Taxi Owners Association, Inc., hereinafter styled the "Company," and Charles W. Sampson, residing at —, Associate Member, herein designated the "Subscriber."

First: This Subscriber hereby subscribes for the Company's "Service for Diamond Taxicabs," set forth in paragraph "Second" of this agreement, and hereby agrees to pay the Company for the said service during the continuance of this agreement at the following rates: (\$—) — Dollars initiation fee payable on the date of the signing of this contract, and Ten (\$10.00) Dollars in advance on the first day of each and every month for each Cab owned and operated by the Subscriber, and will join the sinking fund and pay the sums to be required by it.

Second: The Company agrees that as long as the Subscriber shall keep and perform the covenants and conditions to be kept and performed by him, it will, during the

continuance of this agreement, as to the Cab owned and operated by this Subscriber.

(a) License and permit the Subscriber to have painted thereon, body of cream color, with red stripe or band around center of cab, black top, a red diamond with "I. T. O. A." inscribed therein, and the words "Diamond Cab Company," and "Potomac 6200."

(b) That no associate member be permitted to operate more than one cab.

(c) Establish from time to time as the Company may see fit, call boxes and locations in the District of Columbia where Diamond Cabs will receive calls.

(d) Maintain a central receiving station for telephone calls at offices of the Company, and communicate all requests for Diamond Cab service to the Company's call box and location nearest to the address of the person requesting such taxicab service.

(e) The Company agrees to advertise Diamond Cab service from time to time as the Company may deem proper.

(f) This Subscriber hereby agrees to patronize the Diamond Service Station.

(g) This Subscriber further agrees not to participate or be actively engaged in any other business, exclusive of the operation of a Diamond Cab, while a member of the Independent Taxi Owners Association, Incorporated.

Third: This Subscriber covenants and agrees that he will observe and abide by the Company's "Rules and Regulations for the Operation of Diamond Cabs," printed on the back of this agreement and made a part hereof, and such rules and regulations which may hereafter be made by the Company.

Fourth: It is specifically agreed that the Company has the right at any time to cancel this agreement by so notifying this Subscriber in writing at the address of the Subscriber written above.

Fifth: In the event this agreement is cancelled, this Subscriber shall immediately upon receipt of such notification, remove from Cab owned and operated by him, the color design, diamond, and the words "Diamond Cab Company" and "Potomac 6200," and shall not advertise or indicate in any manner that the Cab owned by this Subscriber is in any way entitled to the "Service for Diamond Cabs" or is

in any manner affiliated, associated or connected with this Association.

Sixth: It is further agreed that the Company is in no wise responsible or assumes any responsibility of any kind arising from personal injuries or property damage caused to or by the Subscriber.

In Witness Whereof the Company has caused these presents to be executed by its proper officers duly authorized thereunto and this Subscriber has hereunto set his hand and seal the day and year first above written.

INDEPENDENT TAXI OWNERS
ASSOCIATION, INC.,

By H. C. DAVIS,
President.

(Signed) CHARLES W. SAMPSON, [L. s.]

Attest:

A. W. MANGER,
Secretary.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this — day of —, A. D. 19—.

_____,
Notary Public.

43 Rules and Regulations for the Operation of Diamond Taxicabs.

Colors: I. Diamond Taxicabs shall be painted only in colors and designs approved by the Company. No color or design not approved by the Company shall be painted on any part of a Diamond Cab.

Words: II. Only the words "Diamond Cab Company" and "Potomac 6200" shall be painted on Diamond Cabs. These words shall be painted on parts of Diamond Cabs and in locations thereon, approved by the Company.

Tariff: III. Only taxi-meters registering rates approved by the Company shall be used on Diamond Taxicabs.

Uniforms: IV. Only equipment approved by the Company shall be used by drivers of Diamond Cabs.

Calls: V. Every driver of a vacant Diamond Cab shall accept calls wherever hailed. At the Company's call boxes and locations drivers must take calls, whether pick-ups or

telephone, in the order in which the drivers stand in line.

Overcharges: VI. If the Company's investigation discloses that a passenger has been overcharged, the Subscriber hereby agrees, upon the Company's request, to refund to the passenger all sums in excess of the correct charge.

Conduct: VII. To preserve the reputation of service rendered by the Diamond Cab Company owners, and to protect the Subscriber against conduct on the part of the drivers inimical to the best interests of all Subscribers, the Board of Directors shall investigate charges brought against drivers and shall take such action as is necessary in the premises. The Board of Directors are authorized to investigate particularly, charges of

- (a) Violation of any of these Rules and Regulations.
- (b) Intoxication while in charge of cab.
- (c) Smoking while in charge of cab.
- (d) Reckless driving.
- (e) Speeding.
- (f) Overcharging.
- (g) Tampering with taxi-meters.
- (h) Discourtesy to passengers.
- (i) Violation of City or State ordinances.
- (j) Using of profane language.
- (k) Keeping the floors, windows and exterior of cab unclean.
- (l) Any other misconduct tending to injure the reputation of Diamond Cab Service.

Member's References.

(Give Names and Addresses of Three Reliable Business Men.)

Name: ———. Address: ———.

Name: ———. Address: ———.

Name: ———. Address: ———.

44 Agreement made this — day of —, 19—, by and between the Independent Taxi Owners Association, Inc., hereinafter styled the "Company," and Charles W. Sampson, residing at —, herein designated the "Subscriber."

First: The Subscriber hereby subscribes for the Company's "Service for Diamond Taxicabs," set forth in paragraph "Second" of this agreement, and hereby agrees to pay the Company for the said service during the continuance of this agreement at the following rates: — (\$—) Dollars initiation fee payable on the date of the signing of this contract, and Ten (\$10.00) Dollars in advance on the first day of each and every month for each Cab owned and operated by the Subscriber, and will join the sinking fund and pay the sums to be required by it.

Second: The Company agrees that as long as the Subscriber shall keep and perform the covenants and conditions to be kept and performed by him, it will, during the continuance of this agreement, as to each and every Diamond Cab owned and operated by the Subscriber.

(a) License and permit the Subscriber to have painted thereon, body of cream color, with red stripe or band around center of cab, black top, a red diamond with "I.T.A.O." inscribed therein, and the words "Diamond Cab Company," and "Potomac 6200."

(c) Establish from time to time as the Company may see fit, call boxes and locations in the District of Columbia where Diamond Cabs will receive calls.

(d) Maintain a central receiving station for telephone calls at offices of the Company, and communicate all requests for Diamond Cab service to the Company's call box and location nearest to the address of the person requesting such taxicab service.

(e) The Company agrees to advertise Diamond Cab service from time to time as the Company may deem proper.

Third: The Subscriber covenants and agrees that he will observe and abide by the Company's "Rules and Regulations for the Operation of Diamond Cabs," printed on the back of this agreement and made a part hereof, and such rules and regulations which may hereafter be made by the Company.

Fourth: It is specifically agreed that the Company has the right at any time to cancel this agreement by so notifying the Subscriber in writing at the address of the Subscriber written above.

Fifth: In the event this agreement is cancelled, the Subscriber shall immediately upon receipt of such notification,

remove from any and all Cabs owned and operated by him, the color design, diamond, and the words "Diamond Cab Company" and "Potomac 6200," and shall not advertise or indicate in any manner that any of the Cabs owned by the Subscriber are in any way entitled to the "Service for Diamond Cabs" or is in any manner affiliated, associated or connected with the Diamond Cab Company.

Sixth: It is further agreed that the Company is in no wise responsible or assumes any responsibility of any kind arising from personal injuries or property damage caused to or by the Subscriber.

In Witness Whereof the Company has caused these presents to be executed by its proper officers duly authorized thereunto and the Subscriber has hereunto set his hand and seal the day and year first above written.

INDEPENDENT TAXI OWNERS
ASSOCIATION, INC.,

By H. C. DAVIS,
President.

(Signed) CHARLES W. SAMPSON, [L. s.]

Attest:

A. W. MANGER,
Secretary.

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this — day of —, A. D. 19—.

_____,
Notary Public.

45 Rules and Regulations for the Operation of Diamond Taxicabs.

Colors: I. Diamond Taxicabs shall be painted only in colors and designs approved by the Company. No color or design not approved by the Company shall be painted on any part of a Diamond Cab.

Words: II. Only the words "Diamond Cab Company" and "Potomac 6200" shall be painted on Diamond Cabs. These words shall be painted on parts of Diamond Cabs and in locations thereon, approved by the Company.

Tariff: III. Only taxi-meters registering rates approved by the Company shall be used on Diamond Taxicabs.

Uniforms: IV. Only equipment approved by the Company shall be used by drivers of Diamond Cabs.

Calls: V. Every driver of a vacant Diamond Cab shall accept calls wherever hailed. At the Company's call boxes and locations drivers must take calls, whether pick-ups or telephone, in the order in which the drivers stand in line.

Overcharges: VI. If the Company's investigation discloses that a passenger has been overcharged, the Subscriber hereby agrees, upon the Company's request, to refund to the passenger all sums in excess of the correct charge.

Conduct: VII. To preserve the reputation of service rendered by the Diamond Cab Company owners, and to protect the Subscriber against conduct on the part of the drivers inimical to the best interests of all Subscribers, the Board of Directors shall investigate charges brought against drivers and shall take such action as is necessary in the premises. The Board of Directors are authorized to investigate particularly, charges of

- (a) Violation of any of these Rules and Regulations.
- (b) Intoxication while in charge of cab.
- (c) Smoking while in charge of cab.
- (d) Reckless driving.
- (e) Speeding.
- (f) Overcharging.
- (g) Tampering with taxi-meters.
- (h) Discourtesy to passengers.
- (i) Violation of City or State ordinances.
- (j) Using of profane language.
- (k) Keeping the floors, windows and exterior of cab unclean.
- (l) Any other misconduct tending to injure the reputation of Diamond Cab Service.

Member's References.

(Give Names and Addresses of Three Reliable Business Men.)

Name: ———. Address: ———.
 Name: ———. Address: ———.
 Name: ———. Address: ———.

46 Know all men by these presents:

Whereas the subscriber is a member of the Independent Taxi Owners Association and owner of one or more cabs, listed on the books of the said Association, as owned by the subscriber and is desirous of creating a Sinking Fund, together with other members of the Independent Taxi Owners Association, for the purpose of assisting the subscribers in adjusting, so far as possible, claims of passengers and the public, for damages caused by the cabs owned and operated by the subscribers hereto; and

Whereas, the Independent Taxi Owners Association, through its officers, are desirous of assisting the subscribers to said fund in adjusting the aforesaid claims:

Now, therefore, it is this — day of —, 19—, agreed as follows:

That the subscriber shall pay to the Independent Taxi Owners Association, as Trustee of said Fund, such sum per month per cab on the first day of each month, on each cab owned and operated by the subscriber as may be determined by the membership as necessary for the purposes of this contract, said amount to be deposited by the Independent Taxi Owners Association, in a reputable Trust Company for the purposes herein enumerated and none other, to wit:

The subscriber agrees to pay all the damages up to and including \$25.00. The Independent Taxi Owners Association to make every effort to compromise, settle and adjust out of the aforesaid fund, all damages in excess of \$25.00 for accidents occurring from the day succeeding the date hereof.

Should the subscriber fail to pay any premium or installment within thirty days from the day when due, the benefits under this Agreement cease, and the amount so paid into said fund by the subscriber is by him forfeited and inures to the benefit of the remaining subscribers.

That if the subscriber severs his membership with said Association or be expelled therefrom, all sums paid in under this Agreement shall be forfeited and inure to the benefit of the remaining subscribers.

The funds hereby created by this Agreement shall be liable for property damage in the sum of Five Hundred Dollars and for loss on account of an accident, entailing bodily injuries, including death, resulting therefrom to one person is limited in any event to One Thousand Dollars and

subject to said limits for each person, the Association's funds liability for loss on account of any one accident entailing bodily injuries, including death, resulting therefrom, to more than one person is limited in any event to Twenty Five Hundred Dollars.

This entire contract shall be void if the subscriber has wilfully or thru negligence concealed or misrepresented any material fact or circumstance concerning this contract or the subject thereof; or in case of any fraud, attempted fraud, or false swearing, whether before or after loss.

In the event of loss or damage covered hereby, the subscriber shall give immediate notice.

In the event of loss or damage whenever requested, the subscriber shall assist in effecting settlement, securing evidence, obtaining the attendance of witnesses and prosecuting suits to such an extent and in such a manner as may be deemed desirable. If action is brought against the subscriber to enforce a claim for damages covered under this Agreement, the subscriber shall immediately notify and promptly forward every summons, or other paper or process served on or received by him in connection therewith, and the subscriber shall not voluntarily assume any liability or interfere in negotiations for settlement or in any legal proceeding, or incur any expense or settle any claim except at his own cost.

That said fund shall be used for no other purpose than that of the settlement of claims as herein set forth, and expenses incidental to the administration of this fund and settlement of said claims.

Should any cab belonging to this subscriber be at fault in any accident whereby the property or person of any person or passenger is damaged or injured while being operated by a driver not in good standing, he shall forfeit the protection of this Agreement and shall bear the entire cost of any settlement made as a result of an accident in which damages are caused by an ineligible driver. That should the subscriber fail to make a full report of the accident within twenty-four hours after the same has occurred, he shall pay the sum of Fifty (\$50.00) Dollars instead of Twenty Five (\$25.00) Dollars as hereinabove provided.

That the subscriber agrees to abide by and submit to the final decision of the adjusters, officers or attorneys of the

Association as to the liability of the subscriber and the amount to be paid.

Upon the failure to comply with these provisions this contract shall immediately become null and void.

(Signed) CHARLES W. SAMPSON, (L. S.)
INDEPENDENT TAXI OWNERS
ASSOCIATION, INC.,
By HARRY C. DAVIS,
Pres.

Witnesseth:

— — —.

Attest:

— — —,

Secretary & Treasurer.

47

Plaintiff's Exhibit No. 7.

(Copy.)

Certificate of Amendment of Independent Taxi Owners
Association, Incorporated.

By the vote of the stockholders of said Corporation upon the amendment of the Certificate of Incorporation, made under the statutes of the State of Delaware, in that behalf.

Independent Taxi Owners Association, a stock corporation existing under the laws of the State of Delaware, hereby certifies as follows:

First. That it appears by the duplicate certificate of E. R. Trammel and H. G. Iseli, the Judges, who were duly appointed by the meeting of the stockholders of said Corporation, duly called in accordance with the By-laws and held on the 12th day of January, A. D. 1928, to conduct the vote of the stockholders of the corporation for and against the proposed amendment to the Certificate of Incorporation; that the persons holding a majority of all of the common stock of this Company, there being no preferred stock outstanding, had voted in favor of the Amendment.

Second. That attached hereto and marked Exhibit A is a true copy of said Amendments to the Certificate of Incorporation as the same were adopted at the meeting of the stockholders aforesaid, which amendments do not reduce the capital of the corporation.

Third. That also attached hereto and marked Exhibit B is one of the duplicate Certificates made by said Judges of the stockholders' vote at said meeting, for and against said Amendment.

Fourth. That the persons holding a majority of the common stock of this Corporation, to-wit: eight shares of
48 the total issue of eight shares of the common stock then outstanding, voted at said stockholders meeting in favor of said Amendment, there being no preferred stock issued or outstanding.

In witness whereof, Independent Taxi Owners Association, Incorporated, has made under its corporate seal and the hand of Eugene R. Thorson, its President, and the hand of Harry C. Davis, its Asst. Secretary, the foregoing Certificate, and the President and Asst. Secretary have hereunto respectively set their hands and caused the corporate seal of said corporation to be hereunto affixed this 12th day January, A. D. 1928.

[Seal Independent Taxi Owners Association, Inc., Washington, D. C.]

INDEPENDENT TAXI OWNERS ASSO-
CIATION, INCORPORATED,
By EUGENE R. THORSON,
President.

Attest:

HARRY C. DAVIS,
Asst. Secretary.

49 DISTRICT OF COLUMBIA,
City of Washington, ss:

Be it remembered, that on this 12th day of January, A. D. 1928, I, Henry M. Fowler, a Notary Public for the District of Columbia, do hereby certify that Eugene R. Thorson, President of Independent Taxi Owners Association, Incorporated, personally known to me to be such, duly executed the foregoing Certificate before me, and that the said Eugene R. Thorson, President aforesaid, duly acknowledged that the signatures of the said President and the said Asst. Secretary to said Certificate appended are in the handwriting of the President and Asst. Secretary of said Corporation, respectively; that the corporate seal to the said

Certificate affixed is the common and corporate seal of said corporation and that the same was duly affixed by the authority of the stockholders of said Corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

[Seal of Henry M. Fowler, Notary Public, Washington, D. C.]

HENRY M. FOWLER,
Notary Public.

Exhibit "A".

The amendment to the Certificate of Incorporation of Independent Taxi Owners Association, Incorporated, a stock corporation existing under the Laws of the State of Delaware by virtue of a Certificate of Incorporation, in conformity with the provision of an Act of the General Assembly of the State of Delaware, entitled, "An Act Providing a General Corporation Law," approved March 10th, 1899, and the acts amendatory thereof and supplemental thereto.

That the Certificate of Incorporation of said Corporation be so amended by decreasing its authorized capital stock, together with other things, that the following be and constitute Paragraphs Third and Fourth, viz:

"Third: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on are to do any or all of the things herein set forth as fully and to the same extent as natural persons might or could do and in any part of the world, viz:

"To organize and maintain a cooperative Association of independent taxicab owners; to foster and promote the social and welfare of its members, a feeling of fellowship and good will among its members and to conserve their individual and associated interest; to acquire, preserve and distribute information to members of this Association relating to taxicabs; to eliminate or minimize abuses, methods and practices inimical or prejudicial to the interests of the public and the individual taxicab owner and the association; for mutual benefit and improvement of its members; to render such aid and assistance and services to the members thereof as may be reasonably necessary; to establish a

central telephone switchboard to be manned and operated
by competent operators; to establish telephone call
51 boxes throughout the City of Washington; to publish
and advertise to the public the services and rates
of its members; to adopt a special design and color scheme
and trade name to use on the cabs of the members; to create
and establish a sinking fund or reserve for the purpose of
indemnifying, so far as practicable, as determined by the
By-laws, the members and licensees of this corporation from
claims against them arising from accidents, occurring in the
course of their regular business, said fund to be administered
under the direction of the Board of Directors in accordance
with the By-laws.

“In general to carry on any other business in connection
therewith and to do every and all things necessary or expedient
for the general good and welfare, not inconsistent with the laws
of the State of Delaware, District of Columbia and the laws of the
United States, of or relating to the individual taxicab drivers’
and owners’ business, in all its branches.

“Fourth: This corporation shall not be for profit.

“This corporation shall not have capital stock. The
members of this Corporation shall be the present members
of this Corporation, now in good standing, and also such
other taxicab owners and operators as shall be admitted to
the Association upon the payment of the initiation fees and
dues provided by the By-laws and as shall be admitted upon
such additional terms and conditions as the By-laws may
now or hereafter provide. The said initiation fees and dues
paid according to the By-laws aforesaid, shall be used exclusively
for expenses arising out of the conduct and maintenance of this
corporation and for such other purposes as may be deemed
necessary and advisable by the Board of Directors and as provided
by the By-laws. Each member shall have issued to him a non-
transferable membership certificate upon the payment of the
52 necessary fees and dues and the fulfilling of the necessary
requirements, which certificate however, shall be subject to
revocation for failure or refusal to pay dues or to abide
by the terms of the By-laws, or for cause shown.”

That the Certificate of Incorporation of this Corporation shall also be further amended by striking out the word "Stockholder" wherever the same appears in the Certificate of Incorporation and by inserting in lieu thereof in each of said places the word "member," the said substitution to take place once in Paragraph Seven, and in six separate places in Paragraph Eight.

53

Exhibit "B".

Duplicate—Judges' Certificate Meeting of Stockholders of Independent Taxi Owners Association, Incorporated.

We, the undersigned, do hereby certify:

That a meeting of the stockholders of Independent Taxi Owners Association, Incorporated, was duly called and held at the Company's office in the City of Washington, District of Columbia, on the 12th day of January, A. D. 1928, at 2 o'clock in the afternoon, for the purpose of considering amending the Certificate of Incorporation of said Corporation.

1. That the subscribers were appointed Judges by said meeting to conduct the vote, taken by ballot, for and against the proposed amendment.

2. That the subscribers did decide upon the qualification of voters and did conduct the vote taken by ballot for and against the proposed amendment.

3. That the subscribers, when the vote was completed, did count and ascertain the number of shares voted respectively, for and against said proposed amendment, as follows, to-wit:

For the Amendment: Common stock, Eight (8) Shares.

Against the Amendment: Common Stock, None Shares.

And we do hereby declare that a majority of the common stock of said corporation, there being no preferred stock outstanding, has voted in favor of the proposed amendment.

Witness our hands this 12th day of January, A. D. 1928.

E. R. TRAMMELL,

H. G. ISELI,

Judges.

54 & 55

State of Delaware.

Office of Secretary of State.

I, Charles H. Grantland, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment of Certificate of Incorporation of the "Independent Taxi Owners Association, Incorporated," as received and filed in this office the fourteenth day of January, A. D. 1928, at 1 o'clock P. M.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this fourteenth day of January, in the year of our Lord one thousand nine hundred and twenty-eight.

[SEAL.]

CHARLES H. GRANTLAND,
Secretary of State.

56

STATE OF DELAWARE,

Kent County, ss:

Recorded in the Office for the Recording of Deeds, &c., at Dover, Delaware, in and for the County aforesaid, in Corporation Record K, Volume 9, Page —, &c., the 14th day of Jan., A. D. 1928.

Witness my hand and the seal of said office the day and year last aforesaid.

JOHN W. TARBURTEN,
Recorder.

[Endorsed:] Certified copy of certificate of amendment of Independent Taxi Owners Association, Incorporated. Received for record this 14th day of Jan., A. D. 1928. John W. Tarburten, Recorder. Charles H. Grantland, Secretary of State, Dover, Delaware.

57

Whereupon **Ellen Splawn** was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That she is in charge of the sinking fund book which she produced; that she made the entries of the book in July, 1932.

Whereupon the following occurred:

Q. Were payments made out of this sinking fund for damages done by Diamond Taxicabs in July, 1932?

Mr. Smith: I object.

The Court: The same grounds, I suppose?

Mr. Smith: For this reason: Whatever may have been done for other people certainly is not material in this case—not for the form of action brought here.

Mr. Collins: We are simply going into it for the purpose of showing procedure.

The Court: The payments should be restricted to members of the association.

Mr. Smith: This action was brought not on the theory of joint enterprise or of estoppel but on the theory of two joint tort feasons acting as servants. What happened so far as this declaration goes is purely immaterial. If they want to inquire about Mr. Sampson, I have no earthly objection, but certainly they have no right to go into the insurance fund so far as it affects other members.

The Court: You may have your exception.

Witness testified that payments were made out of
58 sinking fund for damages done by the cabs in 1932.

Thereupon **Willie Lovett** was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That she has charge of the disbursement book and that the disbursements for the year for July, 1932, are shown in that book.

Whereupon the following occurred:

Q. Will you please read some of the disbursements made in July, 1932?

Mr. Smith: Your Honor, I am making the same objection unless these disbursements apply to the defendants.

The Court: Very well, I will overrule the objection, and you may have your exception.

Mr. Smith: I have an exception to that.

The witness then testified to a number of disbursements made and to whom made and that these disbursements

showed the payment of salaries to employees, switch board operators, inspectors who she believes supervises the cabs, and rent, but no taxicab men or drivers are paid out of that fund; telephone expenses, call box rental, total \$655.50 for month of July, 1932.

Whereupon the following occurred:

59 Mr. Collins: Your Honor, we might possibly shorten this by offering this book in evidence and save going over these various items. I would like to do that at this time.

Mr. Smith: I certainly am going to object to a lot of matter going into this case that has nothing to do with the liability of this company or with the liability of Mr. Sampson.

The Court: That is the ultimate question, of course; but it seems to me to have some relevancy to disprove it. We do not want the whole book to go in.

Mr. Collins: May we take the portion for July?

The Court: It seems to me that she has given the general character of these expenses.

Mr. Collins: May we go one step further and ask her what the total disbursements were for the month of July?

The Court: Yes.

The Witness: \$9,810.31 to the U. S. Savings Bank and \$5,675 to the International Exchange.

By Mr. Collins:

Q. Did either one of those figures include payments out of the so-called sinking fund? A. I don't know.

Mr. Collins: That will be all.

Mr. Smith: Your Honor, I move that all of this testimony go out, because it is immaterial and irrelevant and has nothing to do with the case.

The Court: I will overrule the objection.

Mr. Smith: Exception.

60 Whereupon **Sarah Wyant** was called as a witness for and on behalf of the plaintiff, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

That she is in charge of the accounts receivable; was working on it in July, 1932.

Whereupon the following occurred:

Q. Will you turn to July, 1932, in the book, please, and tell me the total of the accounts receivable for that month?

Mr. Smith: Your Honor, I object to that. If he wants to inquire as to what Mr. Sampson paid in the month of July, I have no objection; but certainly the entire income of the corporation is not admissible in this case for any purpose whatsoever. It does not reflect responsibility in any sense of the word.

Mr. Collins: We are not asking the question for the purpose of reflecting responsibility; we are asking it for the purpose of showing the set-up of this corporation and the business they are in.

The Court: For the purpose of showing the business they are engaged in in the operation of these cabs, yes. I will overrule the objection.

Mr. Smith: Exception.

By Mr. Collins:

Q. Will you tell us the total amount of receipts for that month? A. The total amount of receipts?

Book did not show all of the receipts; that the owners were billed for accounts receivable; Mr. Sampson billed; his dues \$15.00; did not know the exact number of members in 1932 but thinks there was around four hundred; \$10.00 of \$15.00 dues, the balance of sinking fund.

Whereupon **Mrs. May C. Manger** was recalled as a witness for and on behalf of the plaintiff:

61 That she makes most of the entries in the cab book; could not tell how many cabs there were in July, 1932, that she imagines there was about 900; that she had charge of the cash receipt book and the amount of cash received by the Association in July, 1932, was \$10,405.00; it was received daily from each member of the office for dues and a sinking fund;

On cross-examination, witness testified that there never had been a \$1,000.00 initiation fee received from any prospective member.

Whereupon, plaintiff announced her case closed and the jury retired from the Court room.

Whereupon, counsel for defendant moves for a directed verdict in this case as to both defendants upon the ground that Mrs. Mangum, as her testimony stands at the present time, is guilty of contributory negligence; second, because the evidence shows that the cab in question was the property of the defendant, Sampson, owned, operated and controlled by him, and operated at the time of the accident by his agent, servant and employee; and further motion was made to withdraw a juror and declare a mistrial on the ground that testimony as to insurance was improper; that after an argument by counsel for the defendant, further stating the fact that the testimony in the case showed that the plaintiff, Mrs. Mangum, looked north on 15th Street upon entering the intersection and did not see the approaching cab although she could looking up the street some fifty odd feet — that the cab was approaching; that she did not look and is guilty of contributory negligence in accordance with the decision of the Court because there was nothing to obstruct her view if she had seen the cab and if the cab was traveling at a terrific speed she was guilty of going into the street in front of the cab; the second ground was that the testimony tended to show, and did show, that the only evidence as to the ownership of the cab was that Sampson owned it and it was being driven by

62 his agent, servant and employee and is not engaged in the business in connection with Independent Taxi Owners Association; the third ground, for motion was placed upon the ground that the testimony was offered by the plaintiff of the objection of the defendant of the existence of an Insurance fund to take care of the losses caused by the operation of taxicabs owned and operated by the members of the Association while in the course of the taxicab business and this testimony being offered in violation of law.

Defendant objected to the granting of plaintiff's third prayer because there was no evidence to indicate what he saw or could have seen to which an exception was duly noted and allowed; copy of said prayer being attached hereto and being part hereof; the court erred in refusing defendant's prayer number 2 because the said prayer was supported by the proper evidence as to the relationship of the organization with its members and should have been granted for that reason; copy of which prayer is hereto

Whereupon the following occurred:

Q. Will you turn to July, 1932, in the book, please, and tell me the total of the accounts receivable for that month?

Mr. Smith: Your Honor, I object to that. If he wants to inquire as to what Mr. Sampson paid in the month of July, I have no objection; but certainly the entire income of the corporation is not admissible in this case for any purpose whatsoever. It does not reflect responsibility in any sense of the word.

Mr. Collins: We are not asking the question for the purpose of reflecting responsibility; we are asking it for the purpose of showing the set-up of this corporation and the business they are in.

The Court: For the purpose of showing the business they are engaged in in the operation of these cabs, yes. I will overrule the objection.

Mr. Smith: Exception.

By Mr. Collins:

Q. Will you tell us the total amount of receipts for that month? A. The total amount of receipts?

Book did not show all of the receipts; that the owners were billed for accounts receivable; Mr. Sampson billed; his dues \$15.00; did not know the exact number of members in 1932 but thinks there was around four hundred; \$10.00 of \$15.00 dues, the balance of sinking fund.

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Defendant objected to the granting of plaintiff's third prayer because there was no evidence to indicate what he saw or could have seen to which an exception was duly noted and allowed; copy of said prayer being attached hereto and being part hereof; the court erred in refusing defendant's prayer number 2 because the said prayer was supported by the proper evidence as to the relationship of the organization with its members and should have been granted for that reason; copy of which prayer is hereto

attached; the court erred in refusing defendant's prayer number 4, requiring to show that the defendant Association was negligent and there was no evidence to show negligence on the part of the Association, copy of which is hereto attached; the court erred in refusing defendant's prayer number 7, copy of which is hereto attached, to which an exception was duly noted and allowed.

An exception was duly noted and allowed as to the overruling of the three motions hereto, in which case the Court directed verdict for defendant and the withdrawal of a juror, and declaring of a mistrial.

63

Charge of the Court to the Jury.

Ladies and Gentlemen of the Jury:

This case has taken some time to try, but it is an important case for everybody concerned. I believe that all of the time that was taken was necessary to develop the truth of the matter and was not wasted. We have now approached the point where the case will be submitted to you.

This is a negligence case, as you know. The plaintiff, Mrs. Mangum, received some injuries in an accident on the 6th day of July, 1932. She has brought a suit against a man named Sampson, who is conceded to be the owner of the taxicab which collided with Mrs. Mangum's car, the collision resulting in the injuries which she sustained.

This suit is brought against the owner of the car and against the Independent Taxi Owners Association, which is a corporation organized under the laws of the State of Delaware. I am going to pass by the matter of the operation of the cars for a time, because there can be no liability placed on anyone here unless the liability attaches, in the first place, to the defendant Sampson, for if his taxicab was not negligently operated so as to cause this injury then nobody was negligent. The first phase of the case, then, is to find out whether the defendant Sampson, through his employee, operated his car that day in a negligent manner, so as to make him responsible for the injuries received by Mrs. Mangum.

The suit is based upon negligence. No doubt you, sitting as jurors, have tried a number of negligence cases. Negligence means failure to exercise due care under the circumstances of the case. In this case it would be the failure

to exercise such care as a reasonable, prudent person operating a taxicab would be required to exercise. Negligence may consist of two things, either the doing of something which should not have been done or the refraining from doing something which should have been done under the circumstances.

Mrs. Mangum alleges that this accident was caused by the joint negligence of Sampson, the owner, and the taxicab association. As I said a moment ago, however, unless

64 Sampson was negligent, under no circumstances could the defendant Taxicab Association be negligent.

You have heard Mrs. Mangum's testimony about how this accident happened. That testimony is uncontradicted. The defendant did not put in any evidence. He did not have to put in any evidence. The law does not require him to put in any evidence if he does not want to. He has a right to stand on the evidence put in by the plaintiff. It is true that he admits, in substance, that that testimony is uncontradicted, but he does not admit that it is true, because that is for you to say. He does not, however, attempt to contradict it except in so far as the plaintiff's case has contradicted itself by cross-examination, by inconsistencies, or by lack of probability. Whether the plaintiff told the truth or not and whether the accident actually happened as she said it did is for you to decide. The defendant is content to rest upon her testimony. That is all there is to that.

The plaintiff has testified, in substance, that she was driving her car toward the east, approaching the intersection of Fifteenth Street and E Street. She said that she looked and did not see this car approaching. She proceeded to cross the street at a rate of speed not exceeding ten miles an hour; that after the front of her car, as I recall it, had passed the middle line of the intersection of the streets, this car of the defendant Sampson struck her car; and that as a result she received the injuries which have been described to you.

The traffic regulations which have been introduced imposed not only upon the taxicab driver but also upon the plaintiff the duty to proceed cautiously and carefully. The law does not impose upon one any more than on another the duties of driving at a fair rate of speed, keeping the car under control, and exercising due care to avoid accident.

It does give, however, where two cars are approaching the intersection of a street, the right of way to the car on the right-hand side, but that does not give anybody the right to operate recklessly. They have both got to be careful.

65 There is an old jingle that I remember hearing some years ago, which runs as follows:

“There lies the body of Samuel Grey,
Who died defending his right of way.
Sam was right as he rode along,
But he’s just as dead as if he were wrong.”

Sam thought he had the right of way, but he was killed maintaining it.

I say, therefore, that both parties should have exercised due care in approaching that intersection, with the plaintiff having the advantage of the right of way.

If you find that this accident was caused by reason of the disregard by the driver of this taxicab of his obligation to proceed carefully and to reduce his speed if he was going fast or, if he was not going fast, to maintain a reasonably slow speed, so as to avoid collision with other cars, and was caused by his failure to give the plaintiff the right of way, and if you find that such negligence was the proximate cause of this accident, then you will be justified in returning a verdict against him.

When you have reached that point in the case, if you find that he was negligent, as I have described, and that his negligence was the cause of this accident, then you have a right to render a verdict against him in such an amount as will fairly and adequately compensate the plaintiff for the injuries she has received. Fair, just, and adequate compensation is all you have a right to give; you have no right to give any damages upon the basis or theory of teaching the defendant a lesson or of affording an example to others. There are cases where that may be done, but not in these cases. It must be simply compensation which will fairly compensate the plaintiff for the injuries which she has received; and in estimating that, you may take into consideration the pain and suffering which flowed from the injury, the expenses to which she was put in an effort to become cured, and, in this particular case, the damages to the automobile which she was driving. I am not going

to take time to go through all of that. You have heard it testified and have heard counsel comment upon it.

66 So far as the doctor's testimony goes, it is not disputed that he did treat the plaintiff for a broken rib, and he testified as to the fair value of his services. I do not think you will be justified in allowing under that item the sum of more than seventy-nine dollars, because the burden is upon the plaintiff, and I think that is all that could be fairly gathered from his testimony as to his bill for services.

You have heard the testimony as to the automobile damage and you will have to consider that matter yourselves. The only thing that you will be permitted to allow on that item would be the damages from this accident. Anything that happened as a result of something else, of course, would have to be excluded; and anything that did not follow as the proximate result of the accident could not be included. Those things are to be decided by the jurors' judgment and common sense, based upon the actual testimony that has been given.

Of course, you know that you may not disregard any of the testimony, and you may not go beyond the testimony. You must take the testimony as it was given here and decide the case on that, not on what was not here or what somebody else might have said. You must decide the case on the evidence and the evidence alone.

If you should reach the conclusion that this accident was not caused by the negligence of the driver of this taxicab, your labors would be over. The verdict should be, then, for both defendants. If you should find that the accident and the amount of damage were caused by the negligence of the defendant Sampson, then you could proceed to the next question as to whether or not that verdict should be against Sampson alone or against Sampson and the Independent Taxi Owners Association. The latter point is the one which has taken up so much time here. This is an important question. It has been very fairly and fully presented. It is for you now to decide it.

I want to caution you against this: You know from your experience here that sometimes the judge will take the case out of the hands of the jury and direct a verdict.

67 The fact that I have not done so in this case is not to be taken as an indication of what I think about it.

It is nobody's business what I think about it. I have a duty to decide certain questions, and you have a duty to decide your own questions. The reason I have not taken the question out of your hands is that it is for you to decide. It is not the kind of case that the judge can decide himself, so no inference can be drawn from anything that has transpired here. This question is one that requires your judgment as jurors on the question of fact as to whether or not this Association did have such relationship to its member Sampson as justifies the finding that at the time the accident happened Sampson's car was engaged in some business of the Independent Taxi Owners Association.

You have heard testimony about that organization and what its purposes are. You have heard extracts read from its charter. You have heard read the agreement made between Sampson and the Association. You have heard the testimony about the way the Association operates and maintains an office, a telephone system, call boxes, and all the other things that have been told here to you. The ultimate question is whether all those things together justify your conclusion, as a fact, that at the time this accident happened the taxicab was engaged upon some errand which included as part of it a service to the Association.

There has also been introduced here evidence to the effect that this Association maintains a fund for the purpose of settling claims. This is not an insurance fund. I am going to say something more about that in a moment.

To quote from the agreement: "The Association agrees to make every effort to compromise, settle, and adjust out of the aforesaid fund all damages in excess of twenty-five dollars for accidents incurring from the day succeeding the date herein."

It is an agreement to make every effort to compromise, settle, and adjust damages; it is not an insurance contract.

It does not agree to indemnify the owner if an accident happens. I want to caution you about this, too:

Even if it were an insurance contract, you would have no right to take that fact into consideration as bearing upon the liability of Sampson. The law is well settled that in a suit against Sampson, for instance, it would be highly improper to admit any evidence that he was insured. That works both ways. It would be highly improper to introduce any evidence that Mrs. Mangum was insured. That

would have no bearing on whether Sampson was liable. If a person who carried life insurance were killed by a street car, for instance, there could be no evidence by the street car company to prove that he carried life insurance. The insurance question has got to be eliminated as fixing liability. Under your oaths as jurors you have got to consider it that way.

This contract is admissible only in so far as it has a bearing on the question of what the true relationship was between this Association and its individual members. Was that relationship such that when the cab was operating upon the streets it was then and there engaged in performing some of the business of the Association? If it was not, then the Association is not liable; if it was, then the Association would be liable. That is the question of fact which you have to decide so far as the Association is concerned.

The burden is upon the plaintiff to establish by a fair preponderance of the evidence all the facts necessary to make out its cause of action. The burden is upon the plaintiff to establish that this accident was caused by the negligence of the driver of Sampson's car. That is necessary in order to hold Sampson. The burden is also upon the plaintiff, furthermore, to show that the relationship of Sampson to the Association was such that the Association was liable as well as he.

In considering the evidence, all questions of fact, the credibility of the witness, and the weight of the testimony are matters solely for you to decide. A preponderance of the evidence simply means a capacity to tip the scales one way or the other. If the evidence of the plaintiff were put

69 in *into* one pan, so to speak, and the evidence of the defendant was placed in another pan, the evidence of the plaintiff must be enough to make the scales tip in her favor. The weight of the evidence means its tendency to make the scales tip or, in other words, its force as tending to prove some fact.

The credibility of the witnesses means the extent to which they are entitled to be believed. We all know of some people whom we would believe and of some whom we would not. Every day in our lives, perhaps, we have to pass on the question of whether we shall believe a person or shall not believe him. That is a question which arises in this case. It is what I mean when I say "credibility of

the witnesses"—whether the witness shall be believed or disbelieved. You should not refuse arbitrarily to believe a witness. You must have a reasonable and proper ground. If there is something about the appearance or manner of a witness which makes you feel he should not be believed, or if there is a question as to the probability of the story which he has told, you may take those facts into consideration. You may also take into consideration the interest which any witness may have in the result of the controversy. Those things are all in accordance with our general knowledge of life. Sometimes persons are inclined to stretch the truth a little for their own benefit; on the other hand, some people are so honest that they will lean backwards because of their fear of stretching the truth a little bit. The fact that a witness has an interest, as I said, you may take into consideration in weighing the testimony and deciding upon his credibility.

If you believe that any witness has testified falsely with respect to any fact and has done that deliberately and wilfully, then you have a right to disregard that testimony; but you should not disregard any testimony lightly. You should take all the testimony, weigh it carefully, and try to reach a determination which is based upon the finding of the real truth. That is what we are all here for. The only reason we are here at all is to find out what the real truth of this controversy is.

70 I will sum up to you what I have said in this way:

The first question is, was the driver of this taxicab negligent in the operation of that cab? Was this accident due to his negligence? If it was, then you may and should find a verdict against Sampson. If the accident was not due to his carelessness, then your labor is over, and you should find a verdict in favor of both defendants. If you find that Sampson's driver was negligent and your verdict is rendered against Sampson, then the verdict should be for the amount which will fairly compensate the plaintiff for the injuries to herself and to her car, which were the direct proximate result of the accident. Then you may go on to the next step, the question as to whether your verdict should be against not only Sampson but also the Independent Taxi Owners Association. If you find that it should be, then your verdict should be against both of them.

I think I have made that clear. Let me say it again. If you find Sampson was not responsible under the principles laid down, then your verdict should be in favor of both defendants. If you find that Sampson was responsible, then find the amount of the responsibility in dollars. Then go on and find whether that verdict should be against not only Sampson but Sampson and the Independent Taxi Owners Association.

You may render a verdict for both defendants, a verdict for the plaintiff against Sampson, or a verdict for the plaintiff against both Sampson and the Independent Taxi Owners Association. If you find that Sampson was not liable, then you cannot hold either defendant liable, and your verdict then should be for both defendants.

Mr. McCabe: If your Honor please, have you overlooked plaintiff's prayer No. 3?

The Court: If the jury believe from the evidence in this case that the driver of the Diamond taxicab on approaching the intersection of Fifteenth and E Streets, Northwest, saw, or by the exercise of ordinary care should have seen, the plaintiff's automobile in a position of peril or danger in time to have so operated the taxicab he was driving so as to have prevented the collision between the taxicab he was driving and the automobile the plaintiff was driving and failed to exercise such care, and that as a result
71 the collision in this case occurred, causing injuries to plaintiff, then your verdict should be for the plaintiff.

Then, of course, would follow the question as to whether it should also be against the Independent Taxi Owners Association.

Mr. Smith: Your Honor, I think you overlooked our prayer No. 2.

The Court: I instruct you that no presumption of negligence arises from the mere happening of the accident. The burden of proof is upon the plaintiff to prove to the jury by preponderance of all the evidence that the defendants were negligent on the occasion in question and that such negligence was the proximate cause of the accident.

Mr. Smith: I also direct your attention to prayer No. 6. That was as to the visibility at that intersection.

The Court: Should the jury find from all the evidence that the plaintiff on approaching the intersection of Fifteenth Street with E Street found her vision north on Fifteenth Street obstructed by a bank, wall, or shrubbery, it would become her duty to exercise proper and reasonable caution in entering Fifteenth Street. Should the evidence show that she failed so to do and that her failure so to do was the proximate cause of the accident, then, in that event, she is guilty of contributory negligence, and your verdict should be for the defendant.

You may take the case for your deliberation.

(At 11:45 A. M. the jury retired to consider the case and at 3:30 P. M. returned to the court room when the following occurred:)

The Clerk of the Court: Mr. Foreman, have the jury arrived at a verdict?

The Foreman of the Jury: We have.

The Clerk of the Court: Do you find in favor of the plaintiff or in favor of the defendant?

The Foreman of the Jury: We find in favor of the plaintiff for \$1,000.

The Court: Against whom?

The Foreman of the Jury: Against both defendants.

72 The Clerk of the Court: You have heard the verdict announced by your foreman, and that is your verdict, so say you each and all of you?

(The jurors acquiesced.)

(Thereupon the instant trial was concluded.)

73 *Defendant's Prayer No. 3.*

The jury are instructed that if they find from all the evidence that the defendant corporation is a voluntary organization operated without profit, for the mutual benefit of the members of said organization and that the said company does not own or operate a taxicab business, but serves only as a method of promoting and engaging the individual cab service, by its individual members for which they pay a monthly due, which service is rendered by the Association in the nature of transmission of calls for desired taxicab service, fixing uniform rates for such Association, the

purpose is to afford means by which persons engaged in rendering taxicab service may obviate inimical methods for standardized rates, that each member owns his own cab equipment, collects and keeps without accounting all earnings, that the said membership fees and monthly dues are used in maintaining office equipment and the payment of salaries and office expense of telephone and other service, wages of employees and is not for pecuniary profit—then in that event their verdict should be for the defendant.

Exception noted and allowed.

Defendant's Prayer No. 4.

You are instructed that the plaintiff's case depends upon his showing that the defendant, Independent Taxi Owners Association, has been negligent. That is the first point, the first question for you to decide. If the plaintiff fails to convince you by the evidence that this defendant has been negligent, then you should bring in a verdict for the defendant without any further consideration of the case because that is the first and important thing.

Exception noted and allowed.

Defendant's Prayer No. 7.

The jury are instructed that if they find from all of the evidence that the plaintiff looked and failed to see the approaching cab, and there being nothing to prevent the plaintiff from seeing said cab, then they are instructed that she did not look, and that she is guilty of contributory negligence, and that in that event the verdict should be for the defendants.

Exception noted and allowed.

Plaintiff's Prayer No. 3.

If the jury believe from the evidence in this case that the driver of the Diamond taxicab on approaching the intersection of 15th and E Streets, N. W. saw, or by the exercise of ordinary care should have seen plaintiff's automobile in a position of peril or danger in time, by the exercise of ordinary care, to have so operated the taxicab he was

driving so as to have prevented the collision between the taxicab he was driving and the automobile plaintiff was driving, and failed to exercise such care, and that as a result the collision in this case occurred, causing injuries to plaintiff, then your verdict should be for the plaintiff.

Exception noted and allowed.

74 The foregoing is the substance of all of the testimony bearing upon the exceptions herein reserved on behalf of defendant.

And thereupon, and as all of said exceptions were duly noted and allowed as aforesaid and duly entered upon the minutes of the court, before the jury retired to consider of its verdict, and because the matters and things hereinbefore recited are not matters of record, in order to make the same a part of the record herein, which is hereby ordered, so that the defendants may have their case reviewed on appeal, the defendants, by their attorney, move the court to sign and seal this, their bill of exceptions, to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed which motion is granted by the court; and thereupon the defendants tender this, their bill of exceptions, and request the court to sign and seal the same, which is accordingly done, now for then, this 20 day of February, 1934.

ALFRED A. WHEAT,
Chief Justice.

Approved:

ALFRED D. SMITH,
Attorney for Defendants,
Columbian Building, Washington, D. C.

CHARLES C. COLLINS,
JAMES E. McCABE,
Of Counsel for Plaintiff,
Mills Building, Washington, D. C.

Endorsed on cover: District of Columbia Supreme Court. No. 6214. Charles W. Sampson, and Independent Taxi Owners Association, a corporation, trading as the Diamond Cab Company, appellants, vs. Rosa L. Mangum. Court of Appeals, District of Columbia. Filed Apr. 23, 1934. Henry W. Hodges, Clerk.

FILED AUG 10 1934

Henry W. Hodges

IN THE

CLERK

United States Court of Appeals for the
District of Columbia

6214
No. ~~6224~~

CHARLES W. SAMPSON, ET AL.,
Appellants,

VS.

ROSA L. MANGUM,
Appellee.

BRIEF ON BEHALF OF APPELLANT

(Signed) ALFRED D. SMITH,
Attorney for Appellant,
Columbian Building,
Washington, D. C.

IN THE
United States Court of Appeals for the
District of Columbia

CHARLES W. SAMPSON, ET AL.,
Appellants,

vs.

ROSA L. MANGUM,
Appellee.

This cause grew out of an automobile collision at or near the corner of 15th and E Streets, N. W., in the District of Columbia, on July 6, 1932, a taxicab, owned by Charles W. Sampson, and driven by his servant, agent, and employee, D. F. Stevens, the said Sampson being a member of the Independent Taxi Owners' Association, and the cab being painted in accordance with the colors of said Association. The plea to declaration filed by the Independent Taxi Owners' Association denied any responsibility for the collision, denied that it was associated with Sampson in the operating of the taxicab, or that said D. F. Stevens, was the agent, servant or employee of that defendant. The plea of the defendant, Sampson, denied that he was associated with his co-defendant in the operation of the cab, denied that he was negligent or careless in the operation of the cab, or that he violated any of the traffic regulations as set forth in the declaration, and after issue joined, the case was duly tried before Justice Wheat, Chief Justice of the Supreme Court of the District of Columbia, the trial being held before a jury beginning November 21, 1933, as the Court's attention is directed to the fact that an error was made in the bill of exceptions as appears in the Record on page 10, that the trial began March 19, 1931.

The evidence in this case tends to show there was a bank or elevation, including the coping, wall and shrubbery, of about eleven and one-half feet, which prevented the plaintiff on coming out of the park into a public street, from seeing approaching vehicles coming south on 15th Street. The evidence further showed that there had only been approximately \$75.00 expended for medical attendance for the plaintiff.

Testimony was thereupon offered, on the part of the plaintiff, to show the existence of a sinking or insurance fund, through the witnesses produced upon the stand on behalf of plaintiff, all of which evidence was introduced over the objection and exception of the defendant, but thereafter there was introduced in evidence certain exhibits as to the relationship existing between the defendant, Sampson, and the Independent Taxi Owners' Association, for the purpose of showing the existence of a joint enterprise between the two defendants named in this cause. But thereafter there was offered in evidence, over the objection and exception of the defendant, evidence tending to show income of the defendant, Independent Taxi Owners' Association.

Argument

It is respectfully submitted to the Court that there have been apparently three serious errors committed by the Court in connection with the trial of this cause.

The first is the admissibility of the general income of the defendant, Independent Taxi Owners' Association.

The general rule of the law undoubtedly is that income of a defendant is not admissible in evidence for any purpose in this type of tort action for the principle of law involved undoubtedly is, and the only legal reason for the admissibility of such testimony is, in certain types and classes of cases where malice is involved and

where the question of punishment becomes an issue in the case, that testimony as to earning power, wealth, or income of the defendant is admissible. The object of course being to make the assessment of damages a sufficient punishment to prevent a repetition of the particular wrong committed by that defendant. Certainly no court that counsel is cognizant of has ever gone beyond that instruction of law. This rule has been held to be in force and effect in the District of Columbia by the Supreme Court of the United States in a case which went up from the District of Columbia, in which the Court held as follows:

“Punitive damages are damages beyond and above the amount which the plaintiff has really suffered and they awarded upon the theory that they are a punishment to the defendant and not a mere matter of compensation for injuries sustained by the plaintiff. While all defendants joined are liable for compensatory damages there is no justice in allowing a recovery of punitive damages in an action against several defendants based upon evidence of the wealth and ability to pay such damages on the part of one of the defendants only. As the verdict must be for one sum against, as well as for all defendants, who are guilty, it seems to be plain that when a plaintiff voluntarily joins several parties as defendants, he must be held thereby to waive any right to recover punitive damages against all. Founded upon evidence of the ability of one of the several defendants to pay them.”

Washington Gas Light Co. v. Lansden, 172 U. S. 534.

Western Union Telegraph Co. v. Cashman, 132 Fed. 805.

Stockhan v. Malcolm, 111 Md. 615.

“Error in omitting incompetent testimony on result of damages is not cured by an instruction to disregard it.”

Sinker v. Diggins, 76 Mich. 557.

The second error committed by the Court rose out of the refusal of the Court to grant a motion of the defendant, Independent Taxi Owners' Association, for a directed verdict in its favor, because of the failure of the defendant to show the existence of a joint enterprise, and the further fact that the plaintiff showed that the taxicab in question was the sole property of the defendant, Sampson, owned and operated and controlled by him, and further that the person driving the cab at the time of the accident was the agent, servant and employee of Sampson and not the agent, servant and employee of the Independent Taxi Owners' Association. There was a complete failure on the part of the plaintiff to show any relation other than a service duty or a duty to render certain services to the defendant, Sampson, by the defendant association. This is shown by the exhibits offered in evidence and the relationship which existed between the two defendants. Certainly the only theory upon which the Independent Taxi Owners' Association could be held was that of establishing the relationship of the joint adventure as between the two defendants. The record in this case does not disclose that relation or any evidence of it. But does show that the defendant, Sampson, subscribed for certain services to be rendered by the Association to the defendant, Sampson, and for which he agreed to pay a monthly sum. The testimony fails to show that the defendant Association had any monetary interest, either in the cab itself, the income to be derived from it, paid no part of the expenses of its operation and received no portion of the profits earned by said

cab. The Association did not employ the driver of the cab, had no power to control him or to discipline him in any manner whatsoever. The driver was paid for his services by the defendant Sampson. Any power of discipline was vested in Sampson and that there was no relationship as understood at law proven by which the Court could establish or hold the existence of a joint enterprise.

A joint enterprise is in fact nothing more or less than a partnership for a specific single transaction between two or more people in which all parties to said agreement have actual control over the methods and operation of the enterprise engaged in and a financial interest in the proceeds of said enterprise. Payment of a fixed sum as dues for services to be rendered does not constitute a division of profits which may be derived from the operation of said business. That no place in the record does the evidence prove or tend to prove facts sufficient to show the existence of this relationship, but on the contrary, prove that the existence of this relation does not and did not exist.

There can be no creation of this relation by way of estoppel for the reason that estoppel is predicated upon the doctrine of a contract either actually entered into by the parties or implied by law because of the relationship of the parties thereto and this relation does not exist as is shown by the record.

“Equitable estoppel is the effect of voluntary conduct of a party whereby he is absolutely precluded from asserting rights either of property, contract or remedy as against another person who has in good faith relied upon said conduct and has been led thereby to change his condition for the worse.” *Miller v. Abrans*, 163 Fed. 876. (Citing words and phrases, note 3, page 2498.)

“The doctrine of estoppel in pais is founded upon the principle of morality, and is intended to serve the ends of justice. ‘It is a doctrine, therefore, when properly understood and applied, that concludes the truth in order to prevent fraud and falsehood, and imposes silence on a party when in conscience and honesty he should not be allowed to speak.’” *Drury v. Gorell*, 44 D. C. Appl. 529.

“There can be no equitable estoppel short of one arising from actual contract when the truth is known to both parties or when they both have equal means of knowledge.” *Storm v. Boker*, 150 U. S. 512.

“Mere silence itself will not raise an estoppel * * *.” *Baxter v. Jones*, 185, Fed. 900.

“It is an essential element of an equitable estoppel, that the acts, representations, or silence relied on to create the estoppel must have been willfully intended to lead the party setting up the estoppel to act upon them, or there must have been reasonable ground to anticipate that he would change his position or in some way act on the faith of the conduct to his detriment.” *Leather Manufacturers National Bank v. Morgan*, 117 U. S. 96; *Casey v. Galli*, 94 U. S. 673.

In support of the doctrine a joint enterprise does not exist in the instant case, that the following authorities are offered on the subject of joint enterprise:

“The Courts and authorities have not yet laid down any certain definition of a joint adventure, nor have they established any very certain boundaries thereof, but generally they have been content to determine whether the given or concealed facts in a particular case constitutes the relationship of joint adventures or co-partners.”

State v. Whitman, est. 108 Wash. 443.

“A joint adventure may exist where persons embark in an undertaking without entering on the

prosecution of the business as partners strictly, but engage in a common enterprise for their mutual benefit.”

Reid v. Schaffer, 248 Fed. 553.

“Whether the parties to a particular contract have thereby created as between themselves, the relation of joint adventures, or some other relation, depends upon their actual intention, which is to be determined in accordance with the ordinary rules governing the interpretation and construction of contracts.”

Ross v. Bunage, 233 Mass. 439.

“A joint adventure may exist where persons embark in an undertaking without entering on the prosecution of the business as partners strictly but engage in a common enterprise for their mutual benefit; they each have the right to demand and expect from their associates good faith in all that relates to their common interests.”

Reid v. Schaffer, 249 Fed. 553.

“A joint adventure can only exist by the voluntary agreement of the parties to it.”

Mass. v. Lonstorf, 194 Fed. 577.

“Where several engaged in accomplishment of lawful object, fact that one becomes a joint tortfeasor in aid of such accomplishment, does not charge others per se with liability.”

Gerbis v. Bell, 143 Wis. 157.

“A joint owner of an automobile is not liable for injury to third person caused by negligence of other joint owner.”

Mittelstadt v. Kelly, 168 N. W. 501.

“But the justice of a rule charging one with the negligence of another in the matter of performing some detail in the execution of the common plans,

the performance of which detail he has no right to control, is extremely questionable.”

Kokish v. Price, 136 Minn. 304.

Pange v. New York, S. W. R. Co., 8 N. J. L. 604.

Robinson v. Oregon, W. P. & N. Co., 90 Oreg. 490.

Hunt v. Yazoo & M. V. R. Co., 40 Tenn., 623.

McCarma v. Silke, 75 Wash. 383.

“This doctrine was rejected by the Court of Civil Appeals of Texas, the Court saying that “We know of no authority for such a proposition of law, and the appellant has cited none.”

Kansas City, M. & O. R. Co. v. Durrett, 187 S. W. 427 No. 3.

“For this rule to apply, it is said that each must have an equal right of control, and negligence must be in respect of a matter within the joint enterprise.”

Meyers v. So. Pac. R. Co., 218 Pac. 289, No. 4.

Brown v. Wright, 123 Atl. 7.

Tenadway v. United Rys. Co., 253 S. W. 1037.

Corley v. Atchison T. & S. F. Ry. Co., 90 Kann. 70.

“Where the uncontroverted evidence shows that only one of several defendants sued was the sole owner of the car, the others are not liable as a matter of law in the absence of other evidence charging them with liability independent of ownership.”

Empey v. Thurston, 58 Ont. L. 168.

“Another rule of law involved, namely, the rule, that, when two persons are engaged in the prosecution of a joint enterprise, each has authority to act for both in respect to the means or agencies employed to execute the common purpose and the negligence of one in the management thereof will be imputed to both * * *. Defendant contends

that this rule is applicable here. We think it is not. The rule is founded on the theory of partnership or a relation akin to partnership * * *. This joint relation may exist under various circumstances, as in case of occupants of a row boat * * *, or persons using a vehicle together to move furniture * * *, or other goods * * *, or of persons hiring a conveyance to transport their joint property * * *. There is no such situation here. The fact that they were husband and wife, or that they ran a store together, or that they were going fishing together, does not much affect this question. The question is, were they in joint control of the instrumentality that caused the injury, that is, were they jointly operating or controlling the movements of this automobile at the time of the collision."

Kokish v. Price, 136 Minn. 304-309.

"In these cases, however, there runs a vein of common financial interest, indicating a quasi partnership entailing the usual joint control. This would seem to furnish the ultimate distinguishing characteristic of a joint venture in such cases, which is none other than the right, either expressed or implied, to direct the movement of the vehicle employed in the transportation connected with the venture."

Robinson v. Oreg. & Wash. R. & N. Co., 90 Ore. 490-509.

"As heretofore stated, DeLewis and Nelson were partners in the practice of medicine; they had gone to this place to perform a surgical operation; it was Nelson's case and he had performed the operation, but DeLewis had assisted him, and carried him to the patient's residence in his own automobile as a guest without charge. They were jointly interested in the success of the operation, and in that sense were upon a joint enterprise."

Hunt v. Y. & M. V. R. Co., 140 Tenn. 623.

“It is of course, true that he might have been associated with all who were riding in the automobile in some common enterprise, and thus rendered liable for the proper management of the automobile, though not actually driving it himself.”

McCarma v. Silke, 75 Wash. 383-386.

“The thirty-seventh, thirty-eighth, thirty-ninth, and fortieth, are that the Court erred in refusing to submit to the jury the issue as to whether the plaintiff and one Greou, who was also in the car at the time of the accident, were engaged in a joint enterprise, for the reason that in such case, if the jury so found his negligence would be imputed to the plaintiff. We know of no authority for such proposition of law and the appellant has cited none.”

Kansas City, M. & O. Ry. Co. v. Durrett, 187 S. W. 427-430.

“It likewise appears to be a well-settled rule of law that where persons use an automobile in a joint enterprise, the negligence of one of such persons is attributable to the others; but except in those cases in which the relation of master and servant, or that of principal and agent, is shown there can be no such thing as imputed negligence.”

Meyers v. So. Pac. Co., 218 Pac. 284-286.

“It may be conceded that the plaintiff and his son were jointly interested in the conduct of the business of the corporation, but it does not necessarily follow that they possessed joint or community interest in the matter of driving the automobile. These and other questions involve matters of fact for the jury to determine.”

Bryant v. Pac. Elec. Ry. Co., 174 Cal. 737.

“A community of interest in the objects or the purposes of undertaking, and an equal right to direct and govern the movements and conduct of

each other with respect thereto. Each must have some voice and right to be heard in the control and management.”

S. W. L. & S. F., R. A. v. Bell, 58 Okla. 84.

Cunningham v. Thief River Falls, 84 Minn. 27.

Atwood v. Utah L. R. Co., 44 Utah 366.

Cotton v. Willmer, etc., Ry. Co., 99 Minn. 366.

“There is nothing in these cases nor in the other cases relied upon by the plaintiff which even gives color to the contention that an employer who agrees to pay an employee by way of additional compensation a specified percentage of the profits of his (employer’s) adventure become a joint adventurer with the employee; that no such relation comes into existence in such case. The difference between a joint adventurer and a partner is that in case of a joint adventure the persons in question are interested in a single adventure, while they are interested in carrying on business together generally in the case of a partnership.

Stewart v. Aruerbach, 148 N. Y. Ap. Div. 222-223.

Ross v. Burrage, 223 Mass. 439-448.

“Why they should have to pay is the problem recurring through agency in all its forms, and whatever may be thought of some of the reasons that have been offered when the obligation has been imposed, it is certain that something more and better must be found than that the defendants divide the pay for the work that they have done, or that it is a convenience to the party aggrieved to discover a full purse to which to resort. It is true that he is not excused by care in selection or orders sufficient to secure right conduct, if obeyed. But when he could not select, could not control, and could not discharge, the guilty man, he does not answer for his torts. As a familiar instance, the servants of an independent contractor are not

the servants of the contractee. All that there is upon which to base a joint liability is that the pilots, instead of taking their fees as they earn them, accomplish substantially the same result by mingling them in the first place, and then, after paying expenses, distributing them to those on the active list according to the number of days they respectively have been there. Between the proportion of days on the active list and days of active service, the case is the same as if each pilot kept his fees, merely contributing to keep up a common office from which his bills might be sent out and where a few details of common interest could be attended to. In the latter case this suit hardly would have been brought. The distinction between it and the one at bar is not great enough to justify a different result. See the *City of Dundee*, 47 C. C. A. 581, 108 Fed. 679, 684, 103 Fed. 696. The second and third questions certified are answered 'No.' "

Guy, et al. v. Donald, 203 U. S. 399.

The law governing the admissibility of evidence as to the existence of insurance has been settled in this District fully and completely to such an extent that it seems almost unbelievable that there could be any doubt about it, and the comment of the trial court as appears on page 31 of the record, when he commented as follows: "I'm going to let this evidence in and see what the result will be." Certainly it is error to permit the jury to speculate on the question after it has been settled and cause the evidence to be used to fix the amount of damage. And it is respectfully suggested such evidence can result in but one thing and the judgment of the lower court should be reversed for this cause, which is shown by the following authorities:

"We think that to allow juries, in cases of this kind, to take into consideration the fact that an

employer was insured against accidents would do more harm than good and would increase the already strong tendency of juries to be influenced in cases of personal injury, especially where a corporation is defendant, by sympathy and prejudice.”

Sawyer v. Shoe Company, 90 Maine, 369.

Counsel had no right to tell the jury that he understood that an insurance company was defending the case; the court erred in saying that the jury should know about it, and to counsel, “You can tell them about it, if it is the fact.” We are not aware of any authority for the proof of such a fact in such a case.

Coming as this and other statements by counsel did, and sanctioned as they were, against the objections of the defendant, by the court, they were probably more harmful than if regularly given by sworn witnesses.

The courts of this and other States have so frequently spoken on this subject, that calling attention to the following authorities may seem a work of supererogation.

Fuller Co. v. Darragh, 101 Ill. App. 664.

Hennies v. Vogel, 87 Ill. 242.

Elgin, J. & E. Ry. Co. v. Fletcher, 128 Ill. 619.

Welsh v. Huckins, 45 Ill. App. 53.

West Chicago St. Ry. Co. v. Krueger, 68 Ill. App. 450.

Judgment and order reversed on the exceptions, and a new trial ordered, with costs to abide the event. Held: That if the evidence as to the defendants being insured against loss by injuries to their employees, and the comments thereon by the counsel to the jury, were improper:

Wildrick v. Moore, 22 N. Y. Supp. 1119.

Demars v. Glen Mfg. Co., 67 N. H. 404.

“It is contended by the respondent that there was no sufficient objection to this testimony made by counsel for the defense. But the testimony and objections must be considered together to properly determine this question, and, while it is true that the objection to the question, and in case a judgment is rendered against you in this case you will be the one that will have to pay it, will you not? was simply ‘I object the further objection that “I object as incompetent” ’ was urged to the same character of question propounded, for the same purpose, viz, to show that the insurance company, instead of the appellant, would be responsible for the judgment. We think that both court and counsel were fully advised of the object of the question, and of the scope of the objections thereto. It is true the respondent said, when the objection was made, that the question was asked for the purpose of affecting the credibility of the witness; that he wishes to know what his interests were in the case. But it seems to us it plainly appears that the purpose of the question was to get before the jury, not testimony affecting the credibility of the witness, but testimony showing that the judgment would be paid by the insurance company, instead of by the appellant. There was no question about the interest of the witness McDonnell. He was the defendant in the case; had testified that he was, and that he was the owner of the mill, and the employer of the plaintiff in the case. And the testimony sought to be elicited by the counsel for respondent, instead of affecting his credibility by showing the responsibility of the insurance company for the judgment, would tend to strengthen the testimony of the witness by showing that he had no interest in the result of the case. Hence, it is not likely that the attorney for the respondent asked these questions for the purpose of strengthening the testimony of the appellant in the case. To the effect that it is improper

practice in an action for personal injuries for counsel, either by testimony or by understanding that an insurance company is defending the case, see, also, *George A. Fuller Co. v. Darragh*, 101 Ill. App. 664; *Cosselmon v. Dunfee* N. Y., 65 N. E. 494; *Sawyer v. Arnold Shoe Co.*, (Me.) 38 Atl. 333. It is said by counsel for the respondent that these cases are not in point. But while, in some instances, the question was presented in a different form, they all proclaim as reprehensible the practice of endeavoring to get before a jury the fact that the judgment sought to be obtained will have to be paid by an insurance company, instead of by the defendant. But, even in the absence of any authority, and if the question were presented to this court as a matter of first impression, we should without hesitancy conclude that such practice was not in conformity with general principles of law, and hinders, rather than aids, the jury in arriving at a just verdict.

“For the error alleged in this respect the judgment will be reversed.”

But while, in some instances, the question was presented in a different form, they all proclaim as reprehensible the practice of endeavoring to get before a jury the fact that the judgment sought to be obtained will have to be paid by an insurance company, instead of by the defendant.

Capital Constr. Co. v. Holtzman, 27 App. D. C.

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Paxson v. Davis, 51 WLR, 466.

For the errors above cited, the appellant respectfully submits the judgment of the lower Court to be reversed with costs.

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